

**FIRST ENGROSSMENT
with Senate Amendments**

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~~ sections 11-33-02.1 and 11-33-20, into districts of such number, shape,
15 and area as may be determined necessary, and likewise may enact suitable
16 regulations to carry out the purposes of this chapter. These regulations must be
17 uniform in each district, but the regulations in one district may differ from those in
18 other districts. ~~A regulation or restriction may not prohibit or prevent the use of~~
19 ~~land or buildings for farming or ranching or any of the normal incidents of farming~~
20 ~~or ranching. For purposes of this section, "farming or ranching" means cultivating~~
21 ~~land for production of agricultural crops or livestock, or raising, feeding, or~~
22 ~~producing livestock, poultry, milk, or fruit. The term does not include producing~~
23 ~~timber or forest products, nor does the term include a contract whereby a~~

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

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

28 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**
29 **Definitions.**

- 30 1. For purposes of this section:

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

- 1 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
2 animal unit;
- 3 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
4 animal unit;
- 5 g. One horse equals 2.0 animal units;
- 6 h. One sheep or lamb equals 0.1 animal unit;
- 7 i. One turkey equals 0.0182 animal unit;
- 8 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 9 k. One laying hen equals 0.012 animal unit;
- 10 l. One duck equals 0.033 animal unit; and
- 11 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
12 each one thousand pounds [453.59 kilograms] whether single or combined
13 animal weight.
- 14 3. A board of county commissioners may not prohibit or prevent the use of land or
15 buildings for farming or ranching and may not prohibit or prevent any of the normal
16 incidents of farming or ranching.
- 17 4. A board of county commissioners may not preclude the development of a
18 concentrated feeding operation in the county.
- 19 5. A board of county commissioners may not prohibit the reasonable diversification or
20 expansion of a farming or ranching operation.
- 21 6. A board of county commissioners may adopt regulations that establish different
22 standards for the location of concentrated feeding operations based on the size of
23 the operation and the species and type being fed.
- 24 7. If a regulation would impose a substantial economic burden on a concentrated
25 feeding operation in existence before the effective date of the regulation, the board
26 of county commissioners shall declare that the regulation is ineffective with respect
27 to any concentrated feeding operation in existence before the effective date of the
28 regulation.
- 29 8. a. A board of county commissioners may establish high-density agricultural
30 production districts in which setback distances for concentrated feeding

- 1 operations and related agricultural operations are less than those in other
2 districts.
- 3 b. A board of county commissioners may establish, around areas zoned for
4 residential, recreational, or nonagricultural commercial uses, low-density
5 agricultural production districts in which setback distances for concentrated
6 feeding operations and related agricultural operations are greater than those
7 in other districts; provided, the low-density agricultural production districts
8 may not extend more than one and one-half miles [2.40 kilometers] from the
9 edge of the area zoned for residential, recreational, or nonagricultural
10 commercial uses.
- 11 c. The setbacks provided for in this subsection may not vary by more than fifty
12 percent from those established in subdivision a of subsection 7 of section
13 23-25-11.
- 14 d. For purposes of this subsection, a "related agricultural operation" means a
15 facility that produces a product or byproduct used by a concentrated feeding
16 operation.

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

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

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

- 24 c. If a county or township has zoned or established a setback distance for an
25 animal feeding operation which is greater than one-half mile [.80 kilometer]
26 under either section ~~41-33-02 or 58-03-14~~ 11-33-02.1 or 58-03-11.1, or if the
27 setback distance under subsection 7 is greater than one-half mile [.80
28 kilometer], measurements for compliance with the seven odor concentration
29 units standard must be taken at the setback distance rather than one-half mile
30 [.80 kilometer] from the facility under subdivision b, except for any residence,
31 church, school, business, public building, park, or campground within the

1 setback distance which was built or established before the animal feeding
2 operation was established, unless the animal feeding operation has obtained
3 an odor easement from the preexisting facility.

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

6 **58-03-11. Establishment of zoning districts - ~~Limitation—Scope of zoning~~**
7 **~~regulations and restrictions~~ Uniformity.**

8 4. For the purpose of promoting the health, safety, morals, or the general welfare, or
9 to secure the orderly development of approaches to municipalities, the board of
10 township supervisors may establish one or more zoning districts and within such
11 districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1,
12 regulate and restrict the erection, construction, reconstruction, alteration, repair, or
13 use of buildings and structures, the height, number of stories, and size of buildings
14 and structures, the percentage of lot that may be occupied, the size of courts,
15 yards, and other open spaces, the density of population, and the location and use
16 of buildings, structures, and land for trade, industry, residence, or other purposes.
17 All such regulations and restrictions must be uniform throughout each district, but
18 the regulations and restrictions in one district may differ from those in other
19 districts. The board of township supervisors may establish institutional controls
20 that address environmental concerns with the state department of health as
21 provided in section 23-20.3-03.1.

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

30 ~~3. A board of township supervisors may regulate the nature and scope of~~
31 ~~concentrated feeding operations permissible in the township; however, if a~~

1 ~~regulation would impose a substantial economic burden on a concentrated feeding~~
2 ~~operation in existence before the effective date of the regulation, the board of~~
3 ~~township supervisors shall declare that the regulation is ineffective with respect to~~
4 ~~any concentrated feeding operation in existence before the effective date of the~~
5 ~~regulation.~~

6 4. ~~A regulation may not preclude the development of a concentrated feeding~~
7 ~~operation in the township. A regulation addressing the development of a~~
8 ~~concentrated feeding operation in the township may set reasonable standards,~~
9 ~~based on the size of the operation, to govern its location.~~

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

18 6. ~~A board of township supervisors may not prohibit, through regulation, the~~
19 ~~reasonable diversification or expansion of a farming or ranching operation.~~

20 7. ~~Sections 58-03-11 through 58-03-15 do not include any power relating to the~~
21 ~~establishment, repair, and maintenance of highways or roads.~~

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

24 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
25 **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
29 that is not normally used for pasture or for growing crops and in which animal
30 wastes may accumulate. The term does not include normal wintering
31 operations for cattle.

- 1 b. "Farming or ranching" means cultivating land for the production of agricultural
2 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or
3 fruit. The term does not include:
4 (1) The production of timber or forest products; or
5 (2) The provision of grain harvesting or other farm services by a processor
6 or distributor of farm products or supplies in accordance with the terms
7 of a contract.
- 8 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses,
9 bison, elk, fur animals raised for their pelts, and any other animals that are
10 raised, fed, or produced as a part of farming or ranching activities.
- 11 d. "Location" means the setback distance between a structure, fence, or other
12 boundary enclosing a concentrated feeding operation, including its animal
13 waste collection system, and the nearest occupied residence, the nearest
14 buildings used for nonfarm or nonranch purposes, or the nearest land zoned
15 for residential, recreational, or commercial purposes. The term does not
16 include the setback distance for the application of manure or for the
17 application of other recycled agricultural material under a nutrient
18 management plan approved by the department of health.
- 19 2. For purposes of this section, animal units are determined as follows:
- 20 a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
21 b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1
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23 c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
24 animal unit;
25 d. One cow-calf pair equals 1.0 animal unit;
26 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
27 animal unit;
28 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
29 animal unit;
30 g. One horse equals 2.0 animal units;
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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
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10 ranching.
- 11 4. A regulation may not preclude the development of a concentrated feeding
12 operation in the township.
- 13 5. A board of township supervisors may not prohibit the reasonable diversification or
14 expansion of a farming or ranching operation.
- 15 6. A board of township supervisors may adopt regulations that establish different
16 standards for the location of concentrated feeding operations based on the size of
17 the operation and the species and type being fed.
- 18 7. If a regulation would impose a substantial economic burden on a concentrated
19 feeding operation in existence before the effective date of the regulation, the board
20 of township supervisors shall declare that the regulation is ineffective with respect
21 to any concentrated feeding operation in existence before the effective date of the
22 regulation.
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24 production districts in which setback distances for concentrated feeding
25 operations and related agricultural operations are less than those in other
26 districts.
- 27 b. A board of township supervisors may establish, around areas zoned for
28 residential, recreational, or nonagricultural commercial uses, low-density
29 agricultural production districts in which setback distances for concentrated
30 feeding operations and related agricultural operations are greater than those
31 in other districts; provided, the low-density agricultural production districts

1 may not extend more than one-half mile [0.80 kilometer] from the edge of the
2 area zoned for residential, recreational, or nonagricultural commercial uses.

3 c. The setbacks provided for in this subsection may not vary by more than fifty
4 percent from those established in subdivision a of subsection 7 of section
5 23-25-11.

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

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

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