

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2345

Introduced by

Senators Wanzek, Dotzenrod, Luick

Representatives Brandenburg, D. Johnson, Pollert

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15,
2 ~~and 58-03-11.1~~, and 58-03-17 of the North Dakota Century Code, relating to animal feeding
3 operations and zoning regulations; to provide an effective date; to provide a contingent effective
4 date; and to provide an expiration date.

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

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

8 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

9 **Definitions.**

10 1. For purposes of this section:

11 a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling,~~
12 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
13 ~~that is not normally used for pasture or for growing crops and in which animal~~
14 ~~wastes may accumulate. The term does not include normal wintering operations~~
15 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~
16 ~~aquatic animal production facility, where the following conditions are met:~~

- 17 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
18 confined and fed or maintained for at least forty-five days in a twelve-month
19 period; and
20 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
21 in the normal growing season over any portion of the lot or facility.

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

24 The term does not include:

- 1 (1) The production of timber or forest products; or
- 2 (2) The provision of grain harvesting or other farm services by a processor or
- 3 distributor of farm products or supplies in accordance with the terms of a
- 4 contract.
- 5 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
- 6 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
- 7 or produced as a part of farming or ranching activities.
- 8 d. "Location" means the setback distance between a structure, fence, or other
- 9 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
- 10 animal waste collection system, and the nearest occupied residence, the nearest
- 11 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
- 12 residential, recreational, or commercial purposes. The term does not include the
- 13 setback distance for the application of manure or for the application of other
- 14 recycled agricultural material under a nutrient management plan approved by the
- 15 department of health.
- 16 2. For purposes of this section, animal units are determined as follows:
- 17 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 18 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~
- 19 ~~equals 1.0 animal unit;~~
- 20 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
- 21 ~~unit;~~
- 22 d. ~~One cow-calf pair equals 1.0 animal unit;~~
- 23 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~
- 24 ~~animal unit;~~
- 25 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~
- 26 ~~animal unit;~~
- 27 g. ~~One horse equals 2.0 animal units;~~
- 28 h. ~~One sheep or lamb equals 0.1 animal unit;~~
- 29 i. ~~One turkey equals 0.0182 animal unit;~~
- 30 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
- 31 k. ~~One laying hen equals 0.012 animal unit;~~

- 1 l. One duck equals 0.033 animal unit; and
- 2 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-
- 3 each one thousand pounds [453.59 kilograms] whether single or combined
- 4 animal weight, provided in subdivision c of subsection 7 of section 23-25-11.
- 5 3. A board of county commissioners may not prohibit or prevent the use of land or
- 6 buildings for farming or ranching and may not prohibit or prevent any of the normal
- 7 incidents of farming or ranching.
- 8 4. A board of county commissioners may not preclude the development of a-
- 9 ~~concentrated~~ animal feeding operation in the county.
- 10 5. A board of county commissioners may not prohibit the reasonable diversification or
- 11 expansion of a farming or ranching operation.
- 12 6. A board of county commissioners may adopt regulations that establish different
- 13 standards for the location of ~~concentrated~~ animal feeding operations based on the size
- 14 of the operation and the species and type being fed.
- 15 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an-
- 16 imal feeding operation in existence before the effective date of the regulation, the
- 17 board of county commissioners shall declare that the regulation is ineffective with
- 18 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
- 19 date of the regulation.
- 20 8. a. A board of county commissioners may establish high-density agricultural
- 21 production districts in which setback distances for ~~concentrated~~ animal feeding
- 22 operations and related agricultural operations are less than those in other
- 23 districts.
- 24 b. A board of county commissioners may establish, around areas zoned for
- 25 residential, recreational, or nonagricultural commercial uses, low-density
- 26 agricultural production districts in which setback distances for
- 27 ~~concentrated~~ animal feeding operations and related agricultural operations are
- 28 greater than those in other districts; provided, the low-density agricultural
- 29 production districts may not extend more than one and one-half miles [2.40
- 30 kilometers] from the edge of the area zoned for residential, recreational, or
- 31 nonagricultural commercial uses.

1 c. The setbacks provided for in this subsection are subject to approval by the
2 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
3 greater distance than those established in subdivision a of subsection 7 of
4 section 23-25-11.

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

8 9. A person intending to construct an animal feeding operation may petition the board of
9 county commissioners for a determination whether the animal feeding operation would
10 comply with zoning regulations adopted under this section and filed with the state
11 department of health under section 11-33-22 before the date the petition was received
12 by the county. The petition must contain a description of the nature, scope, and
13 location of the proposed animal feeding operation and a site map showing road
14 access, the location of any structure, and the distance from each structure to the
15 nearest section line. If the board of county commissioners does not object to the
16 petition within sixty days of receipt, the animal feeding operation is deemed in
17 compliance with the county zoning regulations. If the county allows animal feeding
18 operations as a conditional use, the county shall inform the applicant of the required
19 procedures upon receipt of the petition, and the conditional use regulations in effect at
20 the time the county receives the petition must control the approval process, except the
21 county shall make a decision on the application within sixty days of the receipt of a
22 complete conditional use permit application. If the board of county commissioners
23 determines the animal feeding operation would comply with zoning regulations or fails
24 to object under this section, the county may not impose additional zoning regulations
25 relating to the nature, scope, or location of the animal feeding operation later, provided
26 an application is submitted promptly to the state department of health, the department
27 issues a final permit, and construction of the animal feeding operation commences
28 within ~~five~~three years from the date ~~of the board's determination or failure to object.~~
29 the department issues its final permit and any permit appeals are exhausted. A board
30 of county commissioners may not:

- 1 a. Regulate or impose zoning restrictions or requirements on animal feeding
2 operations or other agricultural operations except as expressly permitted under
3 this section; or
4 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
5 requirements on animal feeding operations.

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

8 1. For purposes of this section:

- 9 a. ~~"Concentrated Animal feeding operation" means any livestock feeding, handling,~~
10 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
11 ~~that is not normally used for pasture or for growing crops and in which animal~~
12 ~~wastes may accumulate. The term does not include normal wintering operations~~
13 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~
14 ~~aquatic animal production facility, where the following conditions are met:~~
15 ~~(1) Animals, other than aquatic animals, have been, are, or will be stabled or~~
16 ~~confined and fed or maintained for at least forty-five days in a twelve-month~~
17 ~~period; and~~
18 ~~(2) Crops, vegetation, forage growth, or postharvest residues are not sustained~~
19 ~~in the normal growing season over any portion of the lot or facility.~~
20 b. "Farming or ranching" means cultivating land for the production of agricultural
21 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
22 The term does not include:
23 (1) The production of timber or forest products; or
24 (2) The provision of grain harvesting or other farm services by a processor or
25 distributor of farm products or supplies in accordance with the terms of a
26 contract.
27 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
28 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
29 or produced as a part of farming or ranching activities.
30 d. "Location" means the setback distance between a structure, fence, or other
31 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its

1 animal waste collection system, and the nearest occupied residence, the nearest
2 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
3 residential, recreational, or commercial purposes. The term does not include the
4 setback distance for the application of manure or for the application of other
5 recycled agricultural material under a nutrient management plan approved by the
6 department of environmental quality.

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

- 8 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- 9 b. ~~One dairy cow, heifer, or bull, other than an animal described in paragraph 1-~~
10 ~~equals 1.0 animal unit;~~
- 11 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal-~~
12 ~~unit;~~
- 13 d. ~~One cow-calf pair equals 1.0 animal unit;~~
- 14 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~
15 ~~animal unit;~~
- 16 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~
17 ~~animal unit;~~
- 18 g. ~~One horse equals 2.0 animal units;~~
- 19 h. ~~One sheep or lamb equals 0.1 animal unit;~~
- 20 i. ~~One turkey equals 0.0182 animal unit;~~
- 21 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
- 22 k. ~~One laying hen equals 0.012 animal unit;~~
- 23 l. ~~One duck equals 0.033 animal unit; and~~
- 24 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-~~
25 ~~each one thousand pounds [453.59 kilograms] whether single or combined-~~
26 ~~animal weight as provided in subdivision c of subsection 7 of section 23.1-06-15.~~

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

30 4. A board of county commissioners may not preclude the development of a
31 ~~concentrated~~ an animal feeding operation in the county.

- 1 5. A board of county commissioners may not prohibit the reasonable diversification or
2 expansion of a farming or ranching operation.
- 3 6. A board of county commissioners may adopt regulations that establish different
4 standards for the location of ~~concentrated~~animal feeding operations based on the size
5 of the operation and the species and type being fed.
- 6 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~an
7 animal feeding operation in existence before the effective date of the regulation, the
8 board of county commissioners shall declare that the regulation is ineffective with
9 respect to any ~~concentrated~~animal feeding operation in existence before the effective
10 date of the regulation.
- 11 8. a. A board of county commissioners may establish high-density agricultural
12 production districts in which setback distances for ~~concentrated~~animal feeding
13 operations and related agricultural operations are less than those in other
14 districts.
- 15 b. A board of county commissioners may establish, around areas zoned for
16 residential, recreational, or nonagricultural commercial uses, low-density
17 agricultural production districts in which setback distances for
18 ~~concentrated~~animal feeding operations and related agricultural operations are
19 greater than those in other districts; provided, the low-density agricultural
20 production districts may not extend more than one and one-half miles [2.40
21 kilometers] from the edge of the area zoned for residential, recreational, or
22 nonagricultural commercial uses.
- 23 c. The setbacks provided for in this subsection are subject to approval by the
24 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
25 greater distance than those established in subdivision a of subsection 7 of
26 section 23.1-06-15.
- 27 d. For purposes of this subsection, a "related agricultural operation" means a facility
28 that produces a product or byproduct used by a ~~concentrated~~an animal feeding
29 operation.
- 30 9. A person intending to construct an animal feeding operation may petition the board of
31 county commissioners for a determination whether the animal feeding operation would

1 comply with zoning regulations adopted under this section and filed with the
2 department of environmental quality under section 11-33-22 before the date the
3 petition was received by the county. The petition must contain a description of the
4 nature, scope, and location of the proposed animal feeding operation and a site map
5 showing road access, the location of any structure, and the distance from each
6 structure to the nearest section line. If the board of county commissioners does not
7 object to the petition within sixty days of receipt, the animal feeding operation is
8 deemed in compliance with the county zoning regulations. If the county allows animal
9 feeding operations as a conditional use, the county shall inform the applicant of the
10 required procedures upon receipt of the petition, and the conditional use regulations in
11 effect at the time the county receives the petition must control the approval process,
12 except the county shall make a decision on the application within sixty days of the
13 receipt of a complete conditional use permit application. If the board of county
14 commissioners determines the animal feeding operation would comply with zoning
15 regulations or fails to object under this section, the county may not impose additional
16 zoning regulations relating to the nature, scope, or location of the animal feeding
17 operation later, provided an application is submitted promptly to the state department
18 of health, the department issues a final permit, and construction of the animal feeding
19 operation commences within ~~five~~three years from the date ~~of the board's~~
20 ~~determination or failure to object~~the department issues its final permit and any permit
21 appeals are exhausted. A board of county commissioners may not:
22 a. Regulate or impose zoning restrictions or requirements on animal feeding
23 operations or other agricultural operations except as expressly permitted under
24 this section; or
25 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
26 requirements on animal feeding operations.

27 **SECTION 2. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

30 **1.**—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
31 defined in section 11-33-02.1, and which is promulgated by a county after July 31,

2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. 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 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~~an animal feeding operation ~~and,~~
as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

~~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 3. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

1 **23-25-11. Regulation of odors - Rules. (Contingent repeal - [See note](#))**

2 1. In areas located within a city or the area over which a city has exercised extraterritorial
3 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient
4 air any objectionable odorous air contaminant that measures seven odor concentration
5 units or higher outside the property boundary where the discharge is occurring. If an
6 agricultural operation as defined by section 42-04-01 has been in operation for more
7 than one year, as provided by section 42-04-02, and the business or residence making
8 the odor complaint was built or established after the agricultural operation was
9 established, the measurement for compliance with the seven odor concentration units
10 standard must be taken within one hundred feet [30.48 meters] of the subsequently
11 established residence, church, school, business, or public building making the
12 complaint rather than at the property boundary of the agricultural operation. The
13 measurement may not be taken within five hundred feet [.15 kilometer] of the property
14 boundary of the agricultural operation.

15 2. In areas located outside a city or outside the area over which a city has exercised
16 extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge
17 into the ambient air any objectionable odorous air contaminant that causes odors that
18 measure seven odor concentration units or higher as measured at any of the following
19 locations:

20 a. Within one hundred feet [30.48 meters] of any residence, church, school,
21 business, or public building, or within a campground or public park. An odor
22 measurement may not be taken at the residence of the owner or operator of the
23 source of the odor, or at any residence, church, school, business, or public
24 building, or within a campground or public park, that is built or established within
25 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
26 has been built or established;

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

- 1 c. If a county or township has zoned or established a setback distance for an animal
2 feeding operation which is greater than one-half mile [.80 kilometer] under either
3 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
4 greater than one-half mile [.80 kilometer], measurements for compliance with the
5 seven odor concentration units standard must be taken at the setback distance
6 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
7 except for any residence, church, school, business, public building, park, or
8 campground within the setback distance which was built or established before
9 the animal feeding operation was established, unless the animal feeding
10 operation has obtained an odor easement from the pre-existing facility.
- 11 3. An odor measurement may be taken only with a properly maintained scentometer, by
12 an odor panel, or by another instrument or method approved by the state department
13 of health, and only by inspectors certified by the department who have successfully
14 completed a department-sponsored odor certification course and demonstrated the
15 ability to distinguish various odor samples and concentrations. If a certified inspector
16 measures a violation of this section, the department may send a certified letter of
17 apparent noncompliance to the person causing the apparent violation and may
18 negotiate with the owner or operator for the establishment of an odor management
19 plan and best management practices to address the apparent violation. The
20 department shall give the owner or operator at least fifteen days to implement the odor
21 management plan. If the odor problem persists, the department may proceed with an
22 enforcement action provided at least two certified inspectors at the same time each
23 measure a violation and then confirm the violation by a second odor measurement
24 taken by each certified inspector, at least fifteen minutes, but no more than two hours,
25 after the first measurement.
- 26 4. A person is exempt from this section while spreading or applying animal manure or
27 other recycled agricultural material to land in accordance with a nutrient management
28 plan approved by the state department of health. A person is exempt from this section
29 while spreading or applying animal manure or other recycled agricultural material to
30 land owned or leased by that person in accordance with rules adopted by the
31 department. An owner or operator of a lagoon or waste storage pond permitted by the

1 department is exempt from this section in the spring from the time when the cover of
2 the permitted lagoon or pond begins to melt until fourteen days after all the ice cover
3 on the lagoon or pond has completely melted. Notwithstanding these exemptions, all
4 persons shall manage their property and systems to minimize the impact of odors on
5 their neighbors.

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

11 6. For purposes of this section, ~~a public park is a park established by the federal~~
12 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
13 ~~by law. For purposes of this section, a campground is:~~

14 a. "Business" means a commercial building used primarily to carry on a for-profit or
15 nonprofit business which is not residential and not used primarily to manufacture
16 or produce raw materials, products, or agricultural commodities;

17 b. "Campground" means a public or private area of land used exclusively for
18 camping and open to the public for a fee on a regular or seasonal basis;

19 c. "Church" means a building owned by a religious organization and used primarily
20 for religious purposes;

21 d. "Park" means a park established by the federal government, the state, or a
22 political subdivision of the state in the manner prescribed by law;

23 e. "Public building" means a building owned by a county, city, township, school
24 district, park district, or other unit of local government; the state; or an agency,
25 industry, institution, board, or department of the state; and

26 f. "School" means a public school or nonprofit, private school approved by the
27 superintendent of public instruction.

28 7. a. In a county or township that does not regulate the nature, scope, ~~and~~ location
29 of an animal feeding operation under section ~~44-33-0211-33-02.1~~ or section
30 58-03-11.1, the department shall require that any new animal feeding operation

- 1 permitted under chapter 61-28 be set back from any existing residence, church,
2 school, business, public building, park, or campground.
- 3 (1) If there are fewer than three hundred animal units, there is no minimum
4 setback requirement.
- 5 (2) If there are at least three hundred animal units but no more than one
6 thousand animal units, the setback for any animal operation is one-half mile
7 [.80 kilometer].
- 8 (3) If there are at least one thousand one animal units but no more than two
9 thousand animal units, the setback for a hog operation is three-fourths mile
10 [1.20 kilometers] and the setback for any other animal operation is one-half
11 mile [.80 kilometer].
- 12 (4) If there are at least two thousand one animal units but no more than five
13 thousand animal units, the setback for a hog operation is one mile [1.60
14 kilometers] and the setback for any other animal operation is three-fourths
15 mile [1.20 kilometers].
- 16 (5) If there are five thousand one or more animal units, the setback for a hog
17 operation is one and one-half miles [2.40 kilometers] and the setback for
18 any other animal operation is one mile [1.60 kilometers].
- 19 b. The setbacks set forth in subdivision a do not apply if the owner or operator
20 applying for the permit obtains an odor easement from the pre-existing use that is
21 closer.
- 22 c. For purposes of this section:
- 23 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
24 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
25 equals 1.0 animal unit;
26 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75
27 animal unit;
28 (4) One cow-calf pair equals 1.0 animal unit;
29 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
30 animal unit;

- 1 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
- 2 equals 0.1 animal unit;
- 3 (7) One horse equals 2.0 animal units;
- 4 (8) One sheep or weaned 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 ~~0.0080~~0.01 animal unit;
- 7 (11) ~~One laying hen equals 0.012 animal unit;~~
- 8 (12) One duck or goose equals ~~0.0330~~0.2 animal unit; and
- 9 (13)(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0
- 10 animal unit per each one thousand pounds [453.59 kilograms] whether
- 11 single or combined animal weight.

12 d. In a county or township that regulates the nature, scope, or location of an animal
13 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
14 for an animal feeding operation permit shall submit to the department with the
15 permit application the zoning determination made by the county or township
16 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
17 unless the animal feeding operation is in existence by January 1, 2019, and there
18 is no change in animals or animal units which would result in an increase in the
19 setbacks provided for in this section. The department may not impose additional
20 odor setback requirements.

21 e. An animal feeding operation is not subject to zoning regulations adopted by a
22 county or township after the date an application for the animal feeding operation
23 is submitted to the department, provided construction of the animal feeding
24 operation commences within ~~five~~three years from the date the ~~application is~~
25 ~~submitted~~final permit is issued and any permit appeals are exhausted. Unless
26 there is a change to the location of the proposed animal feeding operation or
27 there is a change in animal units which would result in an increase in the
28 setbacks under this section, this exemption remains in effect if the department
29 requires the applicant to submit a revised application.

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

1 9. Neither a county nor a township may regulate or through any means impose
2 restrictions or requirements on animal feeding operations or on other agricultural
3 operations except as permitted under sections ~~11-33-02~~11-33-02.1 and
4 ~~58-03-11~~58-03-11.1.

5 **SECTION 4. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-06-15. Regulation of odors - Rules. (Contingent effective date - [See note](#))**

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

21 2. In areas located outside a city or outside the area over which a city has exercised
22 extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge
23 into the ambient air any objectionable odorous air contaminant that causes odors that
24 measure seven odor concentration units or higher as measured at any of the following
25 locations:

26 a. Within one hundred feet [30.48 meters] of any residence, church, school,
27 business, or public building, or within a campground or public park. An odor
28 measurement may not be taken at the residence of the owner or operator of the
29 source of the odor, or at any residence, church, school, business, or public
30 building, or within a campground or public park, that is built or established within

- 1 one-half mile [.80 kilometer] of the source of the odor after the source of the odor
2 has been built or established;
- 3 b. At any point located beyond one-half mile [.80 kilometer] from the source of the
4 odor, except for property owned by the owner or operator of the source of the
5 odor, or over which the owner or operator of the source of the odor has
6 purchased an odor easement; or
- 7 c. If a county or township has zoned or established a setback distance for an animal
8 feeding operation which is greater than one-half mile [.80 kilometer] under either
9 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is
10 greater than one-half mile [.80 kilometer], measurements for compliance with the
11 seven odor concentration units standard must be taken at the setback distance
12 rather than one-half mile [.80 kilometer] from the facility under subdivision b,
13 except for any residence, church, school, business, public building, park, or
14 campground within the setback distance which was built or established before
15 the animal feeding operation was established, unless the animal feeding
16 operation has obtained an odor easement from the pre-existing facility.
- 17 3. An odor measurement may be taken only with a properly maintained scentometer, by
18 an odor panel, or by another instrument or method approved by the department of
19 environmental quality, and only by inspectors certified by the department who have
20 successfully completed a department-sponsored odor certification course and
21 demonstrated the ability to distinguish various odor samples and concentrations. If a
22 certified inspector measures a violation of this section, the department may send a
23 certified letter of apparent noncompliance to the person causing the apparent violation
24 and may negotiate with the owner or operator for the establishment of an odor
25 management plan and best management practices to address the apparent violation.
26 The department shall give the owner or operator at least fifteen days to implement the
27 odor management plan. If the odor problem persists, the department may proceed
28 with an enforcement action provided at least two certified inspectors at the same time
29 each measure a violation and then confirm the violation by a second odor
30 measurement taken by each certified inspector, at least fifteen minutes, but no more
31 than two hours, after the first measurement.

- 1 4. A person is exempt from this section while spreading or applying animal manure or
2 other recycled agricultural material to land in accordance with a nutrient management
3 plan approved by the department of environmental quality. A person is exempt from
4 this section while spreading or applying animal manure or other recycled agricultural
5 material to land owned or leased by that person in accordance with rules adopted by
6 the department. An owner or operator of a lagoon or waste storage pond permitted by
7 the department is exempt from this section in the spring from the time when the cover
8 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
9 cover on the lagoon or pond has completely melted. Notwithstanding these
10 exemptions, all persons shall manage their property and systems to minimize the
11 impact of odors on their neighbors.
- 12 5. This section does not apply to chemical compounds that can be individually measured
13 by instruments, other than a scentometer, that have been designed and proven to
14 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
15 a reasonable degree of scientific certainty, and for which the department of
16 environmental quality has established a specific limitation by rule.
- 17 6. For purposes of this section, ~~a public park is a park established by the federal~~
18 ~~government, the state, or a political subdivision of the state in the manner prescribed~~
19 ~~by law. For purposes of this section, a campground is:~~
- 20 a. "Business" means a commercial building used primarily to carry on a for-profit or
21 nonprofit business which is not residential and not used primarily to manufacture
22 or produce raw materials, products, or agricultural commodities;
- 23 b. "Campground" means a public or private area of land used exclusively for
24 camping and open to the public for a fee on a regular or seasonal basis;
- 25 c. "Church" means a building owned by a religious organization and used primarily
26 for religious purposes;
- 27 d. "Park" means a park established by the federal government, the state, or a
28 political subdivision of the state in the manner prescribed by law;
- 29 e. "Public building" means a building owned by a county, city, township, school
30 district, park district, or other unit of local government; the state; or an agency,
31 industry, institution, board, or department of the state; and

- 1 f. "School" means a public school or nonprofit, private school approved by the
2 superintendent of public instruction.
- 3 7. a. In a county or township that does not regulate the nature, scope, ~~and~~or location
4 of an animal feeding operation under section ~~41-33-02~~11-33-02.1 or section
5 58-03-11.1, the department shall require that any new animal feeding operation
6 permitted under chapter 61-28 be set back from any existing residence, church,
7 school, business, public building, park, or campground.
- 8 (1) If there are fewer than three hundred animal units, there is no minimum
9 setback requirement.
- 10 (2) If there are at least three hundred animal units but no more than one
11 thousand animal units, the setback for any animal operation is one-half mile
12 [.80 kilometer].
- 13 (3) If there are at least one thousand one animal units but no more than two
14 thousand animal units, the setback for a hog operation is three-fourths mile
15 [1.20 kilometers], and the setback for any other animal operation is one-half
16 mile [.80 kilometer].
- 17 (4) If there are at least two thousand one animal units but no more than five
18 thousand animal units, the setback for a hog operation is one mile [1.60
19 kilometers], and the setback for any other animal operation is three-fourths
20 mile [1.20 kilometers].
- 21 (5) If there are five thousand one or more animal units, the setback for a hog
22 operation is one and one-half miles [2.40 kilometers], and the setback for
23 any other animal operation is one mile [1.60 kilometers].
- 24 b. The setbacks set forth in subdivision a do not apply if the owner or operator
25 applying for the permit obtains an odor easement from the pre-existing use that is
26 closer.
- 27 c. For purposes of this section:
- 28 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
29 (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
30 equals 1.0 animal unit;

- 1 (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
2 0.75 animal unit;
- 3 (4) One cow-calf pair equals 1.0 animal unit;
- 4 (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
5 0.4 animal unit;
- 6 (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms]
7 equals 0.1 animal unit;
- 8 (7) One horse equals 2.0 animal units;
- 9 (8) One sheep or weaned lamb equals 0.1 animal unit;
- 10 (9) One turkey equals 0.0182 animal unit;
- 11 (10) One chicken, ~~other than a laying hen~~, equals ~~0.0080~~0.01 animal unit;
- 12 (11) ~~One laying hen equals 0.012 animal unit;~~
- 13 ~~(12)~~ One duck or goose equals ~~0.0330~~0.2 animal unit; and
- 14 ~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~11 equals 1.0
15 animal unit per each one thousand pounds [453.59 kilograms], whether
16 single or combined animal weight.
- 17 d. In a county or township that regulates the nature, scope, or location of an animal
18 feeding operation under section 11-33-02.1 or section 58-03-11.1, an applicant
19 for an animal feeding operation permit shall submit to the department with the
20 permit application the zoning determination made by the county or township
21 under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1,
22 unless the animal feeding operation is in existence by January 1, 2019, and there
23 is no change in animals or animal units which would result in an increase in the
24 setbacks provided for in this section. The department may not impose additional
25 odor setback requirements.
- 26 e. An animal feeding operation is not subject to zoning regulations adopted by a
27 county or township after the date an application for the animal feeding operation
28 is submitted to the department, provided construction of the animal feeding
29 operation commences within five years from the date the application is submitted.
30 Unless there is a change to the location of the proposed animal feeding

1 operation, this exemption remains in effect if the department requires the
2 applicant to submit a revised application.

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

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

8 **SECTION 5. 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~~Animal feeding operation" means ~~any livestock feeding, handling,~~
14 ~~or holding operation, or feed yard, where animals are concentrated in an area~~
15 ~~that is not normally used for pasture or for growing crops and in which animal~~
16 ~~wastes may accumulate. The term does not include normal wintering operations~~
17 ~~for cattle a lot or facility, other than normal wintering operations for cattle and an~~
18 aquatic animal production facility, where the following conditions are met:

19 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
20 confined and fed or maintained for at least forty-five days in a twelve-month
21 period; and

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

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

26 The term does not include:

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

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

- 1 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
2 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
3 or produced as a part of farming or ranching activities.
- 4 d. "Location" means the setback distance between a structure, fence, or other
5 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
6 animal waste collection system, and the nearest occupied residence, the nearest
7 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
8 residential, recreational, or commercial purposes. The term does not include the
9 setback distance for the application of manure or for the application of other
10 recycled agricultural material under a nutrient management plan approved by the
11 state department of health.
- 12 2. For purposes of this section, animal units are determined as follows:
- 13 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
14 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a,~~
15 ~~equals 1.0 animal unit;~~
16 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
17 ~~unit;~~
18 d. ~~One cow-calf pair equals 1.0 animal unit;~~
19 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4-~~
20 ~~animal unit;~~
21 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1-~~
22 ~~animal unit;~~
23 g. ~~One horse equals 2.0 animal units;~~
24 h. ~~One sheep or lamb equals 0.1 animal unit;~~
25 i. ~~One turkey equals 0.0182 animal unit;~~
26 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
27 k. ~~One laying hen equals 0.012 animal unit;~~
28 l. ~~One duck equals 0.033 animal unit; and~~
29 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per-~~
30 ~~each one thousand pounds [453.59 kilograms] whether single or combined-~~

1 ~~animal weight~~ provided under subdivision c of subsection 7 of

2 section ~~23-23-11~~23-25-11.

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

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

7 5. A board of township supervisors may not prohibit the reasonable diversification or
8 expansion of a farming or ranching operation.

9 6. A board of township supervisors may adopt regulations that establish different
10 standards for the location of ~~concentrated~~ animal feeding operations based on the size
11 of the operation and the species and type being fed.

12 7. If a regulation would impose a substantial economic burden on a ~~concentrated~~ an
13 animal feeding operation in existence before the effective date of the regulation, the
14 board of township supervisors shall declare that the regulation is ineffective with
15 respect to any ~~concentrated~~ animal feeding operation in existence before the effective
16 date of the regulation.

17 8. a. A board of township supervisors may establish high-density agricultural
18 production districts in which setback distances for ~~concentrated~~ animal feeding
19 operations and related agricultural operations are less than those in other
20 districts.

21 b. A board of township supervisors may establish, around areas zoned for
22 residential, recreational, or nonagricultural commercial uses, low-density
23 agricultural production districts in which setback distances for
24 ~~concentrated~~ animal feeding operations and related agricultural operations are
25 greater than those in other districts; provided, the low-density agricultural
26 production districts may not extend more than one-half mile [0.80 kilometer] from
27 the edge of the area zoned for residential, recreational, or nonagricultural
28 commercial uses.

29 c. The setbacks provided for in this subsection are subject to approval by the
30 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a

1 greater distance than those established in subdivision a of subsection 7 of
2 section 23-25-11.

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

6 9. A person intending to construct an animal feeding operation may petition the board of
7 township supervisors for a determination whether the animal feeding operation would
8 comply with zoning regulations adopted under this section and filed with the state
9 department of health under section 58-03-17 before the date the petition was received
10 by the township. The petition must contain a description of the nature, scope, and
11 location of the proposed animal feeding operation and a site map showing road
12 access, the location of any structure, and the distance from each structure to the
13 nearest section line. If the board of township supervisors does not object to the petition
14 within sixty days of receipt, the animal feeding operation is deemed in compliance with
15 the township zoning regulations. If the township allows animal feeding operations as a
16 conditional use, the township shall inform the applicant of the required procedures
17 upon receipt of the petition, and the conditional use regulations in effect at the time the
18 township receives the petition must control the approval process, except the township
19 shall make a decision on the application within sixty days of the receipt of a complete
20 conditional use permit application. If the board of township supervisors determines the
21 animal feeding operation would comply with zoning regulations or fails to object under
22 this section, the township may not impose additional zoning regulations relating to the
23 nature, scope, or location of the animal feeding operation later, provided an application
24 is submitted promptly to the state department of health, the department issues a final
25 permit, and construction of the animal feeding operation commences within ~~five~~three
26 years from the date ~~of the board's determination or failure to object~~the department
27 issues its final permit and any permit appeals are exhausted. A board of township
28 supervisors may not:

29 a. ~~Regulate or impose zoning restrictions or requirements on animal feeding~~
30 ~~operations or other agricultural operations except as expressly permitted under~~
31 ~~this section; or~~

1 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
2 requirements on animal feeding operations.

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

5 1. For purposes of this section:

6 a. ~~"Concentrated Animal~~ 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. The term does not include normal wintering operations~~
10 ~~for cattle~~ a lot or facility, other than normal wintering operations for cattle and an
11 aquatic animal production facility, where the following conditions are met:

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

15 (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained
16 in the normal growing season over any portion of the lot or facility.

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

19 The term does not include:

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

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

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

27 d. "Location" means the setback distance between a structure, fence, or other
28 boundary enclosing ~~a concentrated~~ an animal feeding operation, including its
29 animal waste collection system, and the nearest occupied residence, the nearest
30 buildings used for nonfarm or nonranch purposes, or the nearest land zoned for
31 residential, recreational, or commercial purposes. The term does not include the

- 1 setback distance for the application of manure or for the application of other
2 recycled agricultural material under a nutrient management plan approved by the
3 department of environmental quality.
- 4 2. For purposes of this section, animal units are determined as follows:
- 5 a. ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
6 b. ~~One dairy cow, heifer, or bull, other than an animal described in subdivision a~~
7 ~~equals 1.0 animal unit;~~
8 c. ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal~~
9 ~~unit;~~
10 d. ~~One cow-calf pair equals 1.0 animal unit;~~
11 e. ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4~~
12 ~~animal unit;~~
13 f. ~~One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1~~
14 ~~animal unit;~~
15 g. ~~One horse equals 2.0 animal units;~~
16 h. ~~One sheep or lamb equals 0.1 animal unit;~~
17 i. ~~One turkey equals 0.0182 animal unit;~~
18 j. ~~One chicken, other than a laying hen, equals 0.008 animal unit;~~
19 k. ~~One laying hen equals 0.012 animal unit;~~
20 l. ~~One duck equals 0.033 animal unit; and~~
21 m. ~~Any livestock not listed in subdivisions a through l equals 1.0 animal unit per~~
22 ~~each one thousand pounds [453.59 kilograms] whether single or combined~~
23 ~~animal weight provided under subdivision c of subsection 7 of section 23.1-06-15.~~
- 24 3. A board of township supervisors may not prohibit or prevent the use of land or
25 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 26 4. A regulation may not preclude the development of a ~~concentrated~~ animal feeding
27 operation in the township.
- 28 5. A board of township supervisors may not prohibit the reasonable diversification or
29 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 ~~e~~concentrated~~a~~animal feeding operations based on the size
3 of the operation and the species and type being fed.
- 4 7. If a regulation would impose a substantial economic burden on a ~~c~~concentrated~~a~~n
5 animal feeding operation in existence before the effective date of the regulation, the
6 board of township supervisors shall declare that the regulation is ineffective with
7 respect to any ~~e~~concentrated~~a~~nanimal feeding operation in existence before the effective
8 date of the regulation.
- 9 8. a. A board of township supervisors may establish high-density agricultural
10 production districts in which setback distances for ~~e~~concentrated~~a~~animal feeding
11 operations and related agricultural operations are less than those in other
12 districts.
- 13 b. A board of township supervisors may establish, around areas zoned for
14 residential, recreational, or nonagricultural commercial uses, low-density
15 agricultural production districts in which setback distances for
16 ~~e~~concentrated~~a~~nanimal feeding operations and related agricultural operations are
17 greater than those in other districts; provided, the low-density agricultural
18 production districts may not extend more than one-half mile [0.80 kilometer] from
19 the edge of the area zoned for residential, recreational, or nonagricultural
20 commercial uses.
- 21 c. The setbacks provided for in this subsection are subject to approval by the
22 agriculture commissioner and may not ~~vary by more than fifty percent from~~ be a
23 greater distance than those established in subdivision a of subsection 7 of
24 section 23.1-06-15.
- 25 d. For purposes of this subsection, a "related agricultural operation" means a facility
26 that produces a product or byproduct used by a ~~e~~concentrated~~a~~nanimal feeding
27 operation.
- 28 9. A person intending to construct an animal feeding operation may petition the board of
29 township supervisors for a determination whether the animal feeding operation would
30 comply with zoning regulations adopted under this section and filed with the
31 department of environmental quality under section 58-03-17 before the date the

1 petition was received by the township. The petition must contain a description of the
2 nature, scope, and location of the proposed animal feeding operation and a site map
3 showing road access, the location of any structure, and the distance from each
4 structure to the nearest section line. If the board of township supervisors does not
5 object to the petition within sixty days of receipt, the animal feeding operation is
6 deemed in compliance with the township zoning regulations. If the township allows
7 animal feeding operations as a conditional use, the township shall inform the applicant
8 of the required procedures upon receipt of the petition, and the conditional use
9 regulations in effect at the time the township receives the petition must control the
10 approval process, except the township shall make a decision on the application within
11 sixty days of the receipt of a complete conditional use permit application. If the board
12 of township supervisors determines the animal feeding operation would comply with
13 zoning regulations or fails to object under this section, the township may not impose
14 additional zoning regulations relating to the nature, scope, or location of the animal
15 feeding operation later, provided an application is submitted promptly to the state
16 department of health, the department issues a final permit, and construction of the
17 animal feeding operation commences within ~~five~~three years from the date ~~of the~~
18 ~~board's determination or failure to object~~the department issues its final permit and any
19 permit appeals are exhausted. A board of township supervisors may not:
20 a. Regulate or impose zoning restrictions or requirements on animal feeding
21 operations or other agricultural operations except as expressly permitted under
22 this section; or
23 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
24 requirements on animal feeding operations.

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

27 **58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.**

28 1.—Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as
29 defined in section 58-03-11.1, and which is promulgated by a township after July 31,
30 2007, is not effective until filed with the state department of health for inclusion in the
31 central repository established under section 23-01-30. Any zoning regulation that

1 pertains to a concentrated animal feeding operation and which was promulgated by a
2 county or a township before August 1, 2007, may not be enforced until the regulation
3 is filed with the state department of health for inclusion in the central repository.

4 ~~2. For purposes of this section:~~

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

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

13 **(Contingent effective date - See note) Regulation of ~~concentrated~~ animal feeding**
14 **operations - Central repository.**

15 ~~1. Any zoning regulation that pertains to a ~~concentrated~~ animal feeding operation ~~and~~~~
16 ~~which is promulgated by a township after July 31, 2007, as defined in~~
17 ~~section 58-03-11.1, is not effective until filed with the department of environmental~~
18 ~~quality for inclusion in the central repository established under section 23.1-01-10. ~~Any~~~~
19 ~~zoning regulation that pertains to a concentrated animal feeding operation and which~~
20 ~~was promulgated by a county or a township before August 1, 2007, may not be~~
21 ~~enforced until the regulation is filed with the department of environmental quality for~~
22 ~~inclusion in the central repository.~~

23 ~~2. For purposes of this section:~~

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

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

1 **SECTION 7. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE.**

2 | The portions of sections 1, 2, 5, and 46 of this Act not subject to an existing contingency
3 | become effective on August 1, 2019, and remain in effect until the legislative council receives
4 | certification from the chief of the environmental health section of the state department of health
5 | that all authority, powers, and duties from the environmental health section of the state
6 | department of health have been transferred to the department of environmental quality. The
7 | remainder of sections 1, 2, 5, and 46 become effective on August 1, 2019, if the legislative
8 | council has received certification from the chief of the environmental health section of the state
9 | department of health that all authority, powers, and duties from the environmental health section
10 | of the state department of health have been transferred to the department of environmental
11 | quality. If, by August 1, 2019, the legislative council has not received certification from the chief
12 | of the environmental health section of the state department of health that all authority, powers,
13 | and duties from the environmental health section of the state department of health have been
14 | transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 46
15 | of this Act become effective on the date certification is received.