

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1423**

Introduced by

Representatives Thomas, Beltz, Fegley, Grueneich, Kempenich

Senators Elkin, Kessel, Luick, Myrdal

1 A BILL for an Act to create and enact a new section to chapter 4.1-01 of the North Dakota
2 Century Code, relating to a model zoning review task force; and to amend and reenact sections
3 11-33-02.1, 23.1-01-04, and 58-03-11.1 of the North Dakota Century Code, relating to a model
4 zoning ordinance for animal feeding operations and the North Dakota insurance reserve fund.

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. "Animal feeding operation" means a lot or facility, other than normal wintering
12 operations for cattle and an aquatic animal production facility, where the following
13 conditions are met:

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

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

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

21 The term does not include:

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

- 1 (2) The provision of grain harvesting or other farm services by a processor or
2 distributor of farm products or supplies in accordance with the terms of a
3 contract.
- 4 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
5 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
6 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 an animal feeding operation, including its animal waste
9 collection system, and the nearest occupied residence, the nearest buildings
10 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,
11 recreational, or commercial purposes. The term does not include the setback
12 distance for the application of manure or for the application of other recycled
13 agricultural material under a nutrient management plan approved by the
14 department of environmental quality.
- 15 2. For purposes of this section, animal units are determined as as provided in
16 subdivision c of subsection 7 of section 23.1-06-15.
- 17 3. A board of county commissioners may not prohibit or prevent the use of land or
18 buildings for farming or ranching and may not prohibit or prevent any of the normal
19 incidents of farming or ranching.
- 20 4. A board of county commissioners may not preclude the development of an animal
21 feeding operation in the county.
- 22 5. A board of county commissioners may not prohibit the reasonable diversification or
23 expansion of a farming or ranching operation.
- 24 6. A board of county commissioners may adopt regulations that establish different
25 standards for the location of animal feeding operations based on the size of the
26 operation and the species and type being fed.
- 27 7. If a regulation would impose a substantial economic burden on an animal feeding
28 operation in existence before the effective date of the regulation, the board of county
29 commissioners shall declare that the regulation is ineffective with respect to any
30 animal feeding operation in existence before the effective date of the regulation.

- 1 8. a. A board of county commissioners may establish high-density agricultural
2 production districts in which setback distances for animal feeding operations and
3 related agricultural operations are less than those in other districts.
- 4 b. A board of county commissioners may establish, around areas zoned for
5 residential, recreational, or nonagricultural commercial uses, low-density
6 agricultural production districts in which setback distances for animal feeding
7 operations and related agricultural operations are greater than those in other
8 districts; provided, the low-density agricultural production districts may not extend
9 more than one and one-half miles [2.40 kilometers] from the edge of the area
10 zoned for residential, recreational, or nonagricultural commercial uses.
- 11 ~~e. The setbacks provided for in this subsection may not exceed those established in~~
12 ~~subdivision a of subsection 7 of section 23.1-06-15 unless the county can~~
13 ~~demonstrate compelling, objective evidence specific to the county which requires~~
14 ~~a greater setback within the county, in which case the setbacks may exceed~~
15 ~~those established in subdivision a of subsection 7 of section 23.1-06-15 by no~~
16 ~~more than fifty percent. If a setback under this subsection is greater than the~~
17 ~~corresponding setback established in subdivision a of subsection 7 of~~
18 ~~section 23.1-06-15, a person whose animal feeding operation will be or has been~~
19 ~~affected by the applicable county ordinance may request the agriculture~~
20 ~~commissioner review the ordinance. After the review, the agriculture~~
21 ~~commissioner shall provide a summary of the review to the attorney general and~~
22 ~~request an opinion from the attorney general regarding whether the ordinance~~
23 ~~and setback are lawful.~~
- 24 c. A board of county commissioners may not adopt or enforce setbacks applicable
25 to animal feeding operations that exceed the setback distances provided in
26 subsection 7 of 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 an animal feeding operation.
- 29 9. A person intending to construct an animal feeding operation may petition the board of
30 county commissioners for a determination whether the animal feeding operation would
31 comply with zoning regulations adopted under this section and filed with the

1 department of environmental quality under section 11-33-22 before the date the
2 petition was received by the county. The petition must contain a description of the
3 nature, scope, and location of the proposed animal feeding operation and a site map
4 showing road access, the location of any structure, and the distance from each
5 structure to the nearest section line. If the board of county commissioners does not
6 validly object to the petition within sixty days of receipt, the animal feeding operation is
7 deemed in compliance with the county zoning regulations. If the county allows animal
8 feeding operations as a conditional use, the conditional use regulations must be
9 limited to the board's authority under this section, and the approval process must
10 comply with this section. The county shall make a ~~decision~~ valid determination on the
11 application within sixty days of the receipt of a complete conditional use permit
12 application. If the board of county commissioners determines the animal feeding
13 operation would comply with zoning regulations or fails to object under this section, the
14 county may not impose additional zoning regulations relating to the nature, scope, or
15 location of the animal feeding operation later, provided an application is submitted
16 promptly to the department of environmental equality, the department issues a final
17 permit, and construction of the animal feeding operation commences within three
18 years from the date the department issues its final permit and any permit appeals are
19 exhausted. Any objection or determination that subsequently is reversed, set aside, or
20 invalidated by a court of this state, is not a valid objection or decision for the purpose
21 of calculating a procedural timeline under this section. A procedural timeline imposed
22 by this section continues to be in effect during the pendency of any appeal of a county
23 action or determination. A board of county commissioners may not:

- 24 a. Regulate or impose zoning restrictions or requirements on animal feeding
25 operations or other agricultural operations except as expressly permitted under
26 this section; or
- 27 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
28 requirements on animal feeding operations;
- 29 c. Charge fees or expenses of any kind totaling, in the aggregate, more than five
30 hundred dollars in connection with any permit, petition, application, or other
31 request relating to animal feeding operations; or

1 d. Require an existing animal feeding operation to have a permit for improvements
2 or other modifications of an operation that is in current compliance with state and
3 federal regulations or require an existing operation to have a permit for
4 improvements or other modifications that bring the operation into compliance with
5 state or federal regulations, of the modifications or improvements do not cause
6 the operation to exceed animal numbers of the setback requirement.

7 10. If a party challenges the validity of a county ordinance, determination, decision, or
8 objection related to animal feeding operations, the court shall award the prevailing
9 party actual attorney's fees, costs, and expenses.

10 **SECTION 2. AMENDMENT.** Section 23.1-01-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23.1-01-04. Rulemaking authority - Limitations.**

- 13 1. Except as provided in subsection 2, the department of environmental quality may not
14 adopt any rule for the purpose of the state administering a program under the federal
15 Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et
16 seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource
17 Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive
18 Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];
19 federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.
20 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or
21 federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent
22 than corresponding federal regulations that address the same circumstances. In
23 adopting the rules, the department may incorporate by reference corresponding
24 federal regulations.
- 25 2. The department may adopt rules more stringent than corresponding federal
26 regulations or adopt rules where there are no corresponding federal regulations, for
27 the purposes described in subsection 1, only if the department makes a written finding
28 after public comment and hearing and based upon evidence in the record, that
29 corresponding federal regulations are not adequate to protect the public health and
30 the environment of the state. Those findings must be supported by an opinion of the
31 department referring to and evaluating the public health and environmental information

1 and studies contained in the record which form the basis for the department's
2 conclusions.

3 3. If the department, upon petition by any person affected by a rule of the department,
4 identifies rules more stringent than federal regulations or rules where there are no
5 corresponding federal regulations, the department shall review and revise those rules
6 to comply with this section within nine months of the filing of the petition.

7 4. Any person issued a notice of violation, or a denial of a permit or other approval,
8 based upon a rule of the department which is more stringent than a corresponding
9 federal regulation or where there is no corresponding federal regulation, may assert a
10 partial defense to that notice, or a partial challenge to that denial, on the basis and to
11 the extent the department's rule violates this section by imposing requirements more
12 stringent than corresponding federal regulations, unless the more stringent rule of the
13 department has been adopted in compliance with this section.

14 **SECTION 3. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
17 **Definitions.**

18 1. For purposes of this section:

19 a. "Animal feeding operation" means a lot or facility, other than normal wintering
20 operations for cattle and an aquatic animal production facility, where the following
21 conditions are met:

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

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

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 fruit.

29 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 processor or
2 distributor of farm products or supplies in accordance with the terms of a
3 contract.
- 4 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
5 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
6 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 an animal feeding operation, including its animal waste
9 collection system, and the nearest occupied residence, the nearest buildings
10 used for nonfarm or nonranch purposes, or the nearest land zoned as a
11 residential, recreational, or commercial zoning district. The term does not include
12 the setback distance for the application of manure or for the application of other
13 recycled agricultural material under a nutrient management plan approved by the
14 department of environmental quality.
- 15 2. For purposes of this section, animal units are determined as provided under
16 subdivision c of subsection 7 of section 23.1-06-15.
- 17 3. A board of township supervisors may not prohibit or prevent the use of land or
18 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 19 4. A regulation may not preclude the development of an animal feeding operation in the
20 township.
- 21 5. A board of township supervisors may not prohibit the reasonable diversification or
22 expansion of a farming or ranching operation.
- 23 6. A board of township supervisors may adopt regulations that establish different
24 standards for the location of animal feeding operations based on the size of the
25 operation and the species and type being fed.
- 26 7. If a regulation would impose a substantial economic burden on an animal feeding
27 operation in existence before the effective date of the regulation, the board of township
28 supervisors shall declare that the regulation is ineffective with respect to any animal
29 feeding operation in existence before the effective date of the regulation.

- 1 8. a. A board of township supervisors may establish high-density agricultural
2 production districts in which setback distances for animal feeding operations and
3 related agricultural operations are less than those in other districts.
- 4 b. A board of township supervisors may establish, around areas zoned for
5 residential, recreational, or nonagricultural commercial uses, low-density
6 agricultural production districts in which setback distances for animal feeding
7 operations and related agricultural operations are greater than those in other
8 districts; provided, the low-density agricultural production districts may not extend
9 more than one-half mile [0.80 kilometer] from the edge of the area zoned for
10 residential, recreational, or nonagricultural commercial uses.
- 11 e. ~~The setbacks provided for in this subsection may not exceed those established in~~
12 ~~subdivision a of subsection 7 of section 23.1-06-15 unless the township can~~
13 ~~demonstrate compelling, objective evidence specific to the township which~~
14 ~~requires a greater setback within the township, in which case the setbacks may~~
15 ~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15~~
16 ~~by no more than fifty percent. If a setback under this subsection is greater than~~
17 ~~the corresponding setback established in subdivision a of subsection 7 of section~~
18 ~~23.1-06-15, a person whose animal feeding operation will be or has been~~
19 ~~affected by the applicable township ordinance may request the agriculture~~
20 ~~commissioner review the ordinance. After the review, the agriculture~~
21 ~~commissioner shall provide a summary of the review to the attorney general and~~
22 ~~request an opinion from the attorney general regarding whether the ordinance~~
23 ~~and setback are lawful.~~
- 24 c. A board of township supervisors may not adopt or enforce setbacks applicable to
25 animal feeding operations that exceed the setback distances provided in
26 subsection 7 of 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 an animal feeding operation.
- 29 9. A person intending to construct an animal feeding operation may petition the board of
30 township supervisors for a determination whether the animal feeding operation would
31 comply with zoning regulations adopted under this section and filed with the

1 department of environmental quality under section 58-03-17 before the date the
2 petition was received by the township. The petition must contain a description of the
3 nature, scope, and location of the proposed animal feeding operation and a site map
4 showing road access, the location of any structure, and the distance from each
5 structure to the nearest section line. If the board of township supervisors does not
6 validly object to the petition within sixty days of receipt, the animal feeding operation is
7 deemed in compliance with the township zoning regulations. If the township allows
8 animal feeding operations as a conditional use, the conditional use regulations must
9 be limited to the board's authority under this section, and the approval process must
10 comply with this section. The township shall make a ~~decision~~valid determination on the
11 application within sixty days of the receipt of a complete conditional use permit
12 application. If the board of township supervisors determines the animal feeding
13 operation would comply with zoning regulations or fails to object under this section, the
14 township may not impose additional zoning regulations relating to the nature, scope,
15 or location of the animal feeding operation later, provided an application is submitted
16 promptly to the department of environmental quality, the department issues a final
17 permit, and construction of the animal feeding operation commences within three
18 years from the date the department issues its final permit and any permit appeals are
19 exhausted. Any objection or determination that subsequently is reversed, set aside, or
20 invalidated by a court of this state, is not a valid objection or decision for the purpose
21 of calculating a procedural timeline under this section. A procedural timeline imposed
22 by this section continues to be in effect during the pendency of any appeal of a
23 township action or determination. A board of township supervisors may not:
24 a. Regulate or impose zoning restrictions or requirements on animal feeding
25 operations or other agricultural operations except as expressly permitted under
26 this section; or
27 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
28 requirements on animal feeding operations;
29 c. Charge fees or expenses of any kind totaling, in the aggregate, more than five
30 hundred dollars in connection with any permit, petition, application, or other
31 request relating to animal feeding operations; or

1 d. Require an existing animal feeding operation to have a permit for improvements
2 or other modifications of an operation that is in current compliance with state and
3 federal regulations or require an existing operation to have a permit for
4 improvements or other modifications that bring the operation into compliance with
5 state or federal regulations, if the modifications or improvements do not cause
6 the operation to exceed animal numbers of the setback requirement.

7 10. If a party challenges the validity of a township ordinance, determination, decision, or
8 objection related to animal feeding operations, the court shall award the prevailing
9 party actual attorney's fees, costs, and expenses.

10 **SECTION 4.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Model zoning review task force - Report to the legislative management.**

13 1. Model zoning review task force consists of:

- 14 a. The agriculture commissioner or the commissioner's designee, as chair.
15 b. The director of the department of environmental quality or the director's designee.
16 c. The executive director of the North Dakota Indian affairs commission or the
17 director's designee.
18 d. Two members from the North Dakota township association. One member must
19 be an agriculture producer.
20 e. Two members from the association of counties. One member must be an
21 agriculture producer.
22 f. One member of the milk producers association of North Dakota.
23 g. One member of the North Dakota stockmen's association.
24 h. One member of the North Dakota pork council.
25 i. One member of the North Dakota corn growers association.
26 j. One member of the North Dakota soybean growers association.
27 k. One member of the North Dakota farmers union.
28 l. One member of the North Dakota farm bureau.
29 m. One member of the North Dakota planning association.

30 2. The task force shall:

- 1 a. Develop a new, or update a previously created model zoning ordinance during
- 2 the 2023-24 biennium.
- 3 b. Review low-density agriculture districts and applicable setbacks and uses.
- 4 c. Review current zoning districts for the purpose of considering the impact of
- 5 overlay districts.
- 6 d. Provide a report to the legislative management on changes to the model zoning
- 7 ordinance.
- 8 e. Meet every five years to review and update the model zoning ordinance, if
- 9 necessary.
- 10 3. The agriculture commissioner shall provide the task force with administrative services.
- 11 4. For purposes of this section "model zoning ordinance" means the most current model
- 12 zoning ordinance related to animal feeding operations in this state.