

## HOUSE BILL NO. 1423

1 A BILL for an Act to amend and reenact sections 11-33-02.1, 23.1-01-04, and 58-03-11.1 of the  
2 North Dakota Century Code, relating to a model zoning ordinance for animal feeding operations  
3 and the North Dakota insurance reserve fund.

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

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

7 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**  
8 **Definitions.**

9 1. For purposes of this section:

- 10 a. "Animal feeding operation" means a lot or facility, other than normal wintering  
11 operations for cattle and an aquatic animal production facility, where the following  
12 conditions are met:
- 13 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
14 confined and fed or maintained for at least forty-five days in a twelve-month  
15 period; and
  - 16 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
17 in the normal growing season over any portion of the lot or facility.
- 18 b. "Farming or ranching" means cultivating land for the production of agricultural  
19 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.  
20 The term does not include:
- 21 (1) The production of timber or forest products; or
  - 22 (2) The provision of grain harvesting or other farm services by a processor or  
23 distributor of farm products or supplies in accordance with the terms of a  
24 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 an animal feeding operation, including its animal waste  
6 collection system, and the nearest occupied residence, the nearest buildings  
7 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,  
8 recreational, or commercial purposes. The term does not include the setback  
9 distance for the application of manure or for the application of other recycled  
10 agricultural material under a nutrient management plan approved by the  
11 department of environmental quality.
- 12 e. "Model zoning ordinance" means the most current model zoning ordinance  
13 related to animal feeding operations published by the agriculture commissioner.  
14 ~~The setbacks provided in subdivision a of subsection 7 of section 23.1-06-15~~  
15 ~~must be identical to the setbacks provided in the model zoning ordinance.~~
- 16 2. For purposes of this section, animal units are determined as as provided in  
17 subdivision c of subsection 7 of section 23.1-06-15.
- 18 3. A board of county commissioners may not prohibit or prevent the use of land or  
19 buildings for farming or ranching and may not prohibit or prevent any of the normal  
20 incidents of farming or ranching.
- 21 4. A board of county commissioners may not preclude the development of an animal  
22 feeding operation in the county.
- 23 5. A board of county commissioners may not prohibit the reasonable diversification or  
24 expansion of a farming or ranching operation.
- 25 6. A board of county commissioners may adopt regulations that establish different  
26 standards for the location of animal feeding operations based on the size of the  
27 operation and the species and type being fed.
- 28 7. If a regulation would impose a substantial economic burden on an animal feeding  
29 operation in existence before the effective date of the regulation, the board of county  
30 commissioners shall declare that the regulation is ineffective with respect to any  
31 animal feeding operation in existence before the effective date of the regulation.





~~30 with defending the lawsuit. If a party successfully challenges an ordinance or  
31 setback that previously has been determined to be unlawful by the attorney  
1 general and the county has failed to revoke the ordinance or setback, the court  
2 must award the challenging party's actual attorneys' fees, costs, and expenses.~~

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

- 6 9. A person intending to construct an animal feeding operation may petition the board of  
7 county commissioners for a determination whether the animal feeding operation would  
8 comply with zoning regulations adopted under this section and filed with the  
9 department of environmental quality under section 11-33-22 before the date the  
10 petition was received by the county. The petition must contain a description of the  
11 nature, scope, and location of the proposed animal feeding operation and a site map  
12 showing road access, the location of any structure, and the distance from each  
13 structure to the nearest section line. If the board of county commissioners does not  
14 validly object to the petition within sixty days of receipt, the animal feeding operation is  
15 deemed in compliance with the county zoning regulations. If the county allows animal  
16 feeding operations as a conditional use, the conditional use regulations must be  
17 limited to the board's authority under this section, and the approval process must  
18 comply with this section. The county shall make a ~~decision~~ valid determination on the  
19 application within sixty days of the receipt of a complete conditional use permit  
20 application. If the board of county commissioners determines the animal feeding  
21 operation would comply with zoning regulations or fails to object under this section, the  
22 county may not impose additional zoning regulations relating to the nature, scope, or  
23 location of the animal feeding operation later, provided an application is submitted  
24 promptly to the department of environmental equality, the department issues a final  
25 permit, and construction of the animal feeding operation commences within three  
26 years from the date the department issues its final permit and any permit appeals are  
27 exhausted. Any objection or determination that subsequently is reversed, set aside, or  
28 invalidated by a court of this state, is not a valid objection or decision for the purpose  
29 of calculating a procedural timeline under this section. A procedural timeline imposed  
30 by this section continues to be in effect during the pendency of any appeal of a county  
31 action or determination. A board 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; or  
6 c. Charge fees or expenses of any kind totaling, in the aggregate, more than five  
7 hundred dollars in connection with any permit, petition, application, or other  
8 request relating to animal feeding operations.
- d. Require an existing animal feeding operation to permit for improvements or other  
modifications of an operation that is in current compliance with state and federal  
regulations or require an existing operation to permit for improvements or other  
modifications that bring the operation into compliance with state or federal  
regulations, if the modifications or improvements do not cause the operation to  
exceed animal numbers of the setback requirement.

9 10. If a party challenges the validity of a county ordinance, determination, decision, or  
objection related to animal feeding operations, the court shall award the successful party  
reimbursement of actual attorneys' fees, costs, and expenses. A county may rely on the North-  
Dakota insurance reserve fund for the defense of any

10 litigation regarding the validity of county ordinances, determinations, decisions, or  
11 objections relating to animal feeding operations, if the county's ordinances regulating  
12 animal feeding operations are identical to the model zoning ordinance. A county  
13 ordinance relating to animal feeding operations which deviates from, supplements,  
14 adds to, or fails to adopt the model zoning ordinance in its entirety may not utilize the  
15 North Dakota insurance reserve fund for any litigation arising from or relating to county  
16 ordinances, determinations, decisions, or objections relating to animal feeding  
17 operations. If a party successfully challenges the validity of a county ordinance,  
18 determination, decision, or objection related to animal feeding operations, the court  
19 shall award the reimbursement of actual attorneys' fees, costs, and expenses.

20 11. For each new animal feeding operation located within a county, the county must  
21 receive two percent of the cost of developing the animal feeding operation, paid from  
22 the innovation loan fund under chapter 6-09.18, when:

23 a. The date construction of the animal feeding operation is complete; and



24 ~~b. The animal feeding operation receives its final permit or regulatory approval to~~  
25 ~~operate. If a single animal feeding operation is located in more than one county,~~  
26 ~~the county within which a majority of the animal feeding operation, as measured~~  
27 ~~by square feet, is located must receive the cost share from the innovation loan~~  
28 ~~fund.~~

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

1 **23.1-01-04. Rulemaking authority - Limitations.**

- 2 1. Except as provided in subsection 2, the department of environmental quality may not  
3 adopt any rule for the purpose of the state administering a program under the federal  
4 Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et  
5 seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource  
6 Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive  
7 Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];  
8 federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.  
9 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or  
10 federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent  
11 than corresponding federal regulations that address the same circumstances. In  
12 adopting the rules, the department may incorporate by reference corresponding  
13 federal regulations.
- 14 2. The department may adopt rules more stringent than corresponding federal  
15 regulations or adopt rules where there are no corresponding federal regulations, for  
16 the purposes described in subsection 1, only if the department makes a written finding  
17 after public comment and hearing and based upon evidence in the record, that  
18 corresponding federal regulations are not adequate to protect the public health and  
19 the environment of the state. Those findings must be supported by an opinion of the  
20 department referring to and evaluating the public health and environmental information  
21 and studies contained in the record which form the basis for the department's  
22 conclusions.
- 23 3. If the department, upon petition by any person affected by a rule of the department,  
24 identifies rules more stringent than federal regulations or rules where there are no  
25 corresponding federal regulations, the department shall review and revise those rules  
26 to comply with this section within nine months of the filing of the petition.

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

~~3 5. The department may not approve, review, or deny any permit application contingent  
4 on whether an applicant is in compliance with applicable county or township zoning  
5 ordinances.~~

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

8 **58-03-11.1. 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 a total of forty-five days or more in any  
16 twelve-month 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

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

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



29 d. "Location" means the setback distance between a structure, fence, or other  
30 boundary enclosing an animal feeding operation, including its animal waste  
31 collection system, and the nearest occupied residence, the nearest buildings  
1 used for nonfarm or nonranch purposes, or the nearest land zoned as a  
2 residential, recreational, or commercial zoning district. The term does not include  
3 the setback distance for the application of manure or for the application of other  
4 recycled agricultural material under a nutrient management plan approved by the  
5 department of environmental quality.

6 e. "Model zoning ordinance" means the most current model zoning ordinance  
7 related to animal feeding operations published by the agriculture commissioner.  
8 ~~The setbacks provided in subdivision a of subsection 7 of section 23.1-06-15~~  
9 ~~shall be identical to the setbacks provided in the model zoning ordinance. The~~  
10 ~~setbacks provided in subdivision a of subsection 7 of section 23.1-06-15 shall be~~  
11 ~~identical to the setbacks provided in the model zoning ordinance.~~

- 12 2. For purposes of this section, animal units are determined as provided under  
13 subdivision c of subsection 7 of section 23.1-06-15.
- 14 3. A board of township supervisors may not prohibit or prevent the use of land or  
15 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 16 4. A regulation may not preclude the development of an animal feeding operation in the  
17 township.
- 18 5. A board of township supervisors may not prohibit the reasonable diversification or  
19 expansion of a farming or ranching operation.
- 20 6. A board of township supervisors may adopt regulations that establish different  
21 standards for the location of animal feeding operations based on the size of the  
22 operation and the species and type being fed.
- 23 7. If a regulation would impose a substantial economic burden on an animal feeding  
24 operation in existence before the effective date of the regulation, the board of township  
25 supervisors shall declare that the regulation is ineffective with respect to any animal  
26 feeding operation in existence before the effective date of the regulation.
- 27 8. a. A board of township supervisors may establish high-density agricultural  
28 production districts in which setback distances for animal feeding operations and  
29 related agricultural operations are less than those in other districts.
- 30 b. A board of township supervisors may establish, around areas zoned for



31 residential, recreational, or nonagricultural commercial uses, low-density  
1 agricultural production districts in which setback distances for animal feeding  
2 operations and related agricultural operations are greater than those in other  
3 districts; provided, the low-density agricultural production districts may not extend  
4 more than one-half mile [0.80 kilometer] from the edge of the area zoned for  
5 residential, recreational, or nonagricultural commercial uses.

6 c. A board of township supervisors may not adopt or enforce setbacks applicable to  
animal feeding operations that exceed the setback distances provided for subsection 7  
of 23.1-06-15 ~~The setbacks provided for in this subsection may not exceed those  
established in~~

7 ~~subdivision a of subsection 7 of section 23.1-06-15 unless the township can~~  
8 ~~demonstrate compelling, objective evidence specific to the township created by~~  
9 ~~an independent third party, which requires a greater setback within the township,~~  
10 ~~in which case the setbacks may exceed those established in subdivision a of~~  
11 ~~subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback~~  
12 ~~under this subsection is greater than the corresponding setback established in~~  
13 ~~subdivision a of subsection 7 of section 23.1-06-15, a person whose animal-~~  
14 ~~feeding operation will be or has been affected by the applicable township~~  
15 ~~ordinance any person or party may request the agriculture commissioner to~~  
16 ~~review the ordinance. After the review, the agriculture commissioner shall provide~~  
17 ~~a summary of the review to the attorney general and request an opinion from the~~  
18 ~~attorney general regarding whether the ordinance and setback are lawful. An~~  
19 ~~opinion from the attorney general issued under this subsection governs the~~  
20 ~~actions of public officials until the opinion is superseded by a court of this state.~~  
21 ~~d. If the attorney general issues an opinion that concludes an ordinance or setback~~  
22 ~~is unlawful, and the township fails to formally revoke the ordinance or setback~~  
23 ~~before a lawsuit challenging the validity of the ordinance or setback is initiated,~~  
24 ~~the township may not utilize the North Dakota insurance reserve fund in~~  
25 ~~connection with defending the lawsuit. If a party successfully challenges an~~  
26 ~~ordinance or setback that previously has been determined to be unlawful by the~~  
27 ~~attorney general and the township has failed to revoke the ordinance or setback,~~  
28 ~~the court shall award the challenging party's actual attorneys' fees, costs, and~~  
29 ~~expenses.~~

30 ~~d.e.~~ For purposes of this subsection, a "related agricultural operation" means a facility  
31 that produces a product or byproduct used by an animal feeding operation.

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



1           c. Charge fees or expenses of any kind totaling, in the aggregate, more than five  
2           hundred dollars in connection with any permit, petition, application, or other  
3           request relating to animal feeding operations.

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

10          10. If a party challenges the validity of a township ordinance, determination, decision,  
11          or objection related to animal feeding operations, the court shall award the successful party  
12          reimbursement of actual attorneys' fees, costs, and expenses. A township may rely on the  
13          North Dakota insurance reserve fund for the defense of

14          any litigation regarding the validity of township ordinances, determinations, decisions,  
15          or objections relating to animal feeding operations, if the township's ordinances  
16          regulating animal feeding operations are identical to the model zoning ordinance. A  
17          township ordinance relating to animal feeding operations which deviates from,  
18          supplements, adds to, or fails to adopt the model zoning ordinance in its entirety may  
19          not utilize the North Dakota insurance reserve fund for any litigation arising from or  
20          relating to township ordinances, determinations, decisions, or objections relating to  
21          animal feeding operations. If a party successfully challenges the validity of a township  
22          ordinance, determination, decision, or objection related to animal feeding operations,  
23          the court shall award the reimbursement of actual attorneys' fees, costs, and  
24          expenses.

25          11. For each new animal feeding operation located within a township, the township must  
26          receive one percent of the cost of developing the animal feeding operation, paid from  
27          the innovation loan fund under chapter 6-09.18, when:

- 28          a. The date construction of the animal feeding operation is complete; and  
29          b. The animal feeding operation receives its final permit or regulatory approval to  
30          operate. If a single animal feeding operation is located in more than  
31          one township, the township within which a majority of the animal feeding  
32          operation, as measured by square feet, is located must receive the cost share  
33          of the cost of developing the animal feeding operation.

**SECTION 4. AMENDMENT.** Section 4.1-01-24 of the North Dakota Century Code is created and enacted as follows:

**Model zoning review task force**

1. Model zoning review task force consists of:
  - a. The agriculture commissioner or the commissioner's designee, as chair.
  - b. The director of department of environmental quality or the director's designee.
  - c. Two members from the North Dakota township association, one which must be an agriculture producer.
  - d. Two members from the association of counties, one which must be an agriculture producer.
  - e. One member of the milk producer's association of North Dakota
  - f. One member of the North Dakota stockmen's association
  - g. One member of the North Dakota pork council
  - h. One member from the North Dakota corn growers' association
  - i. One member from North Dakota soybean growers' association
  - j. One member from North Dakota farmers union
  - k. One member from North Dakota farm bureau
  - l. One member from North Dakota planning association
2. The task force shall develop and update the model zoning ordinance during the 23-25 biennium.
  - a. The task force shall review low density agriculture districts and applicable setbacks and uses.
  - b. The task force shall review current zoning districts for purpose of creating overlay districts.
  - c. Provide a report to legislative management on changes to the model zoning ordinance.
3. The task force shall meet every 5 years to review and update the model zoning ordinance.
4. The agriculture commissioner shall provide the task force with administrative services.





