

**FIRST ENGROSSMENT**

**ENGROSSED SENATE BILL NO. 2174**

Introduced by

Senators Thomas, Conley, Lemm, Weston

Representatives Beltz, Hauck

1 A BILL for an Act to amend and reenact sections 11-33-02.1 and 58-03-11.1 of the North Dakota  
2 Century Code, relating to the regulation of odors in an animal feeding operation and zoning  
3 authority over animal feeding operations in counties and townships; and to provide an effective  
4 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. "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. AExcept as provided in this section, a board of county commissioners may not  
21                  preclude the development of an animal 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          c.   A board of county commissioners may not adopt or enforce setbacks applicable  
12                  to animal feeding operations that exceed the setback distances provided in  
13                  subsection 7 of section 23.1-06-15, except setback distances may be reduced or  
14                  extended based on the results of the odor footprint tool developed by the  
15                  agriculture commissioner. A county may not use an odor annoyance free  
16                  percentage exceeding ninety-four percent.
- 17          d.   For purposes of this subsection, a "related agricultural operation" means a facility  
18                  that produces a product or byproduct used by an animal feeding operation.
- 19          9.   a.   A person intending to construct an animal feeding operation may petition the  
20                  board of county commissioners for a determination whether the animal feeding  
21                  operation would comply with zoning regulations adopted under this section and  
22                  filed with the department of environmental quality under section 11-33-22 before  
23                  the date the petition was received by the county.
- 24          b.   The petition must contain a description of the nature, scope, and location of the  
25                  proposed animal feeding operation and a site map showing road access, the  
26                  location of any structure, and the distance from each structure to the nearest  
27                  section line.
- 28          c.   If the board of county commissioners does not validly object to the petition within  
29                  sixty days of receipt, the animal feeding operation is deemed in compliance with  
30                  the county zoning regulations. If the county allows animal feeding operations as a  
31                  conditional use, the conditional use regulations must be limited to the board's

1 authority under this section, and the approval process must comply with this  
2 section. The county shall make a valid determination on the application within  
3 sixty days of the receipt of a complete conditional use permit application.

4 d. If the board of county commissioners determines the animal feeding operation  
5 would comply with zoning regulations or fails to object under this section, the  
6 county may not impose additional zoning regulations relating to the nature,  
7 scope, or location of the animal feeding operation later, provided an application is  
8 submitted promptly to the department of environmental equality, the department  
9 issues a final permit, and construction of the animal feeding operation  
10 commences within three years from the date the department issues its final  
11 permit and any permit appeals are exhausted. Any objection or determination that  
12 subsequently is reversed, set aside, or invalidated by a court of this state, is not a  
13 valid objection or decision for the purpose of calculating a procedural timeline  
14 under this section.

15 e. A procedural timeline imposed by this section continues to be in effect during the  
16 pendency of any appeal of a county action or determination.

17 f. A board of county commissioners may not:

18 a- (1) Regulate or impose zoning restrictions or requirements on animal feeding  
19 operations or other agricultural operations except as expressly permitted  
20 under this section;

21 b- (2) Impose water quality, closure, site security, lagoon, or nutrient plan  
22 regulations or requirements on animal feeding operations;

23 e- (3) Charge fees or expenses of any kind totaling, in the aggregate, more than  
24 five hundred dollars in connection with any permit, petition, application, or  
25 other request relating to animal feeding operations; or

26 d- (4) Require an existing animal feeding operation to have a permit for  
27 improvements or other modifications of an operation that is in current  
28 compliance with state and federal regulations or require an existing  
29 operation to have a permit for improvements or other modifications that  
30 bring the operation into compliance with state or federal regulations, if the

1 modifications or improvements do not cause the operation to exceed animal  
2 numbers of the setback requirement.

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

6 **SECTION 2. 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 2. For purposes of this section, animal units are determined as provided under  
7 subdivision c of subsection 7 of section 23.1-06-15.
- 8 3. A board of township supervisors may not prohibit or prevent the use of land or  
9 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 10 4. Except as provided in this section, a regulation may not preclude the development of  
11 an animal feeding operation in the township.
- 12 5. A board of township supervisors may not prohibit the reasonable diversification or  
13 expansion of a farming or ranching operation.
- 14 6. A board of township supervisors may adopt regulations that establish different  
15 standards for the location of animal feeding operations based on the size of the  
16 operation and the species and type being fed.
- 17 7. If a regulation would impose a substantial economic burden on an animal feeding  
18 operation in existence before the effective date of the regulation, the board of township  
19 supervisors shall declare that the regulation is ineffective with respect to any animal  
20 feeding operation in existence before the effective date of the regulation.
- 21 8. a. A board of township supervisors may establish high-density agricultural  
22 production districts in which setback distances for animal feeding operations and  
23 related agricultural operations are less than those in other districts.
- 24 b. A board of township supervisors may establish, around areas zoned for  
25 residential, recreational, or nonagricultural commercial uses, low-density  
26 agricultural production districts in which setback distances for animal feeding  
27 operations and related agricultural operations are greater than those in other  
28 districts; provided, the low-density agricultural production districts may not extend  
29 more than one-half mile [0.80 kilometer] from the edge of the area zoned for  
30 residential, recreational, or nonagricultural commercial uses.

1 c. A board of township supervisors may not adopt or enforce setbacks applicable to  
2 animal feeding operations that exceed the setback distances provided in  
3 subsection 7 of section 23.1-06-15, except setback distances may be reduced or  
4 extended based on the results of the odor footprint tool developed by the  
5 agriculture commissioner. A township may not use an odor annoyance free  
6 percentage exceeding ninety-four percent.

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

9 9. a. A person intending to construct an animal feeding operation may petition the  
10 board of township supervisors for a determination whether the animal feeding  
11 operation would comply with zoning regulations adopted under this section and  
12 filed with the department of environmental quality under section 58-03-17 before  
13 the date the petition was received by the township.

14 b. The petition must contain a description of the nature, scope, and location of the  
15 proposed animal feeding operation and a site map showing road access, the  
16 location of any structure, and the distance from each structure to the nearest  
17 section line.

18 c. If the board of township supervisors does not validly object to the petition within  
19 sixty days of receipt, the animal feeding operation is deemed in compliance with  
20 the township zoning regulations. If the township allows animal feeding operations  
21 as a conditional use, the conditional use regulations must be limited to the  
22 board's authority under this section, and the approval process must comply with  
23 this section. The township shall make a valid determination on the application  
24 within sixty days of the receipt of a complete conditional use permit application.

25 d. If the board of township supervisors determines the animal feeding operation  
26 would comply with zoning regulations or fails to object under this section, the  
27 township may not impose additional zoning regulations relating to the nature,  
28 scope, or location of the animal feeding operation later, provided an application is  
29 submitted promptly to the department of environmental quality, the department  
30 issues a final permit, and construction of the animal feeding operation  
31 commences within three years from the date the department issues its final

1 permit and any permit appeals are exhausted. Any objection or determination that  
2 subsequently is reversed, set aside, or invalidated by a court of this state, is not a  
3 valid objection or decision for the purpose of calculating a procedural timeline  
4 under this section.

5 e. A procedural timeline imposed by this section continues to be in effect during the  
6 pendency of any appeal of a township action or determination.

7 f. A board of township supervisors may not:

8 a- (1) Regulate or impose zoning restrictions or requirements on animal feeding  
9 operations or other agricultural operations except as expressly permitted  
10 under this section;

11 b- (2) Impose water quality, closure, site security, lagoon, or nutrient plan  
12 regulations or requirements on animal feeding operations;

13 e- (3) Charge fees or expenses of any kind totaling, in the aggregate, more than  
14 five hundred dollars in connection with any permit, petition, application, or  
15 other request relating to animal feeding operations; or

16 d- (4) Require an existing animal feeding operation to have a permit for  
17 improvements or other modifications of an operation that is in current  
18 compliance with state and federal regulations or require an existing  
19 operation to have a permit for improvements or other modifications that  
20 bring the operation into compliance with state or federal regulations, if the  
21 modifications or improvements do not cause the operation to exceed animal  
22 numbers of the setback requirement.

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

26 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on August 1, 2026.