2021 SENATE AGRICULTURE

SB 2216

2021 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Fort Union Room, State Capitol

SB 2216
1/28/2021

Relating to the definition of location for animal feeding operations.

9:00 AM
Chair Luick called the Committee to order at 9:00 AM. Roll call was taken. Present: Chair Luick, Vice Chair Myrdal, Senators: Klein, Lemm, O. Larsen, Hogan.

Discussion Topics:

- Zoning practices
- Environmental issues

Chair Luick District 25 introduced the Bill **(9:01 AM)**

Pete Hannebutt ND Farm Bureau testified in favor and introduced Tyler Leverington.

Tyler Leverington ND Farm Bureau testified in favor # 3885 **(9:04 AM)**

Tom Bodine, Deputy Agriculture Commissioner testified in favor # 3860 **(9:09 AM)**

Julie Ellingson ND Stockmen's Association testified in favor # 4215 **(9:11 AM)**

Douglas Yankton, Chairman of the Spirit Lake Tribe testified in opposition # 4029 **(9:15 AM)**

Additional written testimony:
Phil Murphy NDSGA - provided testimony in favor # 3043 and # 3820

Chair Luick closed the hearing at 9:37 AM.

Alice Delzer, Committee Clerk

Tyler Leverington
Ohnstad Twichell, P.C.
444 Sheyenne Street, Ste. 102
West Fargo, North Dakota 58078

I will be appearing virtually to provide oral testimony at the January 28, 2021 meeting of the Senate Agriculture Committee at the invitation of Chairman Luick to provide information regarding the reasons for and implications of the language tweaks proposed by Senate Bill No. 2216. The proposed language tweaks will not change the meaning of the relevant statute but will clarify the statute by replacing a reference to land zoned for a certain "purpose" with the more technically correct term "zoning district."

This change will avoid unnecessary confusion and ensure N.D.C.C. § 58-03-11.1 is read consistently with its sister-statute N.D.C.C. § 58-03-11 which authorizes townships to create zoning districts.

Respectfully,

/s/ Tyler Leverington

COMMISSIONER
DOUG GOEHRING

ndda@nd.gov
www.nd.gov/ndda

NORTH DAKOTA
DEPARTMENT OF AGRICULTURE
STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
BISMARCK, ND 58505-0020

SB 2216 Testimony
Tom Bodine
Deputy Agriculture Commissioner
Senate Agriculture Committee
Fort Union Room
January 28, 2021

Chairman Luick and members of the Senate Agriculture Committee, I am Deputy Agriculture Commissioner Tom Bodine here on behalf of Commissioner Goehring and I am here to support Senate Bill 2216.

SB 2216 improves the clarification for identifying when setbacks need to be implemented when animal feeding operations are developing. We applaud the sponsors of this bill for creating greater transparency in the law.

Chairman Luick and committee members, thank you for your consideration of SB 2216. I will stand for any questions about this or the zoning review program.

North Dakota Stockmen's Association
Testimony to the Senate Agriculture Committee on SB 2216
Jan. 28, 2021

Good morning, Chairman Luick and members of the Senate Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association, a 91-year-old beef cattle trade organization representing approximately 3,000 North Dakota cattle-ranching families.

The Stockmen's Association offers its support to SB 2216, a step in clarifying the setback provision in this area of Code. The bill helps make it explicit that setbacks will be measured from any land zoned as a residential, recreational or commercial zoning district and removes the ambiguity that can be read into the current language, which references the undefined terms of "use " and "purpose" and can cause confusion.

The Stockmen's Association appreciates the work of the legislative body over the past couple of sessions to provide clarity regarding animal feeding operation permitting. It is important for the animal agriculture community, as well as the political subdivisions where these animal feeding operations are located, as both need and deserve regulatory certainty.

We are strong proponents of responsible animal agriculture development and local control and see SB 2216 as checking both those boxes. We ask for your favorable consideration of this bill.

SPIRIT LAKE TRIBE
S.B. 2216
FORMAL COMMENT and TESTIMONY
Thursday January 28, 2021

My name is Douglas Yankton, and I serve as Chairman of the Spirit Lake Tribe. I submit this formal comment and testimony on behalf of the Spirit Lake Tribe in opposition to Senate Bill 2216 that is pending before the Joint Agriculture Committee. Senate Bill 2216 was introduced by Senators Luick, Klein, Lemm Myrdal, and Representatives D. Johnson, and Trottier on January 15, 2021 in an effort to amend and reenact portions of section 58-03-11.1 of the North Dakota Century Code relevant to animal feeding operations.

Spirit Lake is a federally recognized tribe located in North Dakota. The Tribe has a ratified treaty with the United States government dating back to February 19, 1867, which, in relevant part, includes Devils Lake. Although there has been some dispute between the state of North Dakota and the Spirit Lake Tribe regarding ownership of the lakebed itself, the dispute remains unresolved and the parties have been able to regulate activities on and near the lake through cooperative agreements and with the mutual goal of safeguarding this important natural and cultural resource.

In the recent years, efforts have been made to open a hog farm near Devils Lake. The Tribe vehemently opposed this economic venture and passed Resolution Number A05-18-243 on August 30, 2018. When it comes to these types of agricultural enterprises, we have legitimate concerns about the impact posed to the health and welfare of our tribal members, our environment and our overall economy. Such concerns increase when such commercial enterprises are able to be placed at or near water sources. This was exactly the situation we faced in 2018 as the proposed site for the hog farm was a mere half mile from Devils Lake and dump sites proposed were located at or near the Spiritwood and Warwick Aquifers.

As we have previously stated, feeding operations such as the hog farm mentioned above raise dire environmental consequences relevant to water quality, air quality and wildlife. Manure and wastewater have higher nitrates and phosphates which threaten water quality, air quality and the health of wildlife in the area. Further, elevated nitrates, phosphates, and ammonia levels in the air and water will undoubtedly have long-term, negative health consequences for the members of the Tribe and neighboring residents.

While we understand that agricultural and commercial enterprises do have some financial benefits, the financial benefits must be weighed heavily against the risk of negative environmental, health, and economic consequences for our Tribe and for our neighbors in the region. It makes no sense to open one economic opportunity only to diminish another. These operations can significantly hinder the Tribe's ability to improve the economic climate and diversify the tribal economy. Projects such as the hog farm discourage future investors and projects from being realized because of the nuisance created from air pollution, water pollution, and noise pollution. They do not foster an environment conducive to economic growth but instead discourage it. And this doesn't even take into account the negative impact on tourism in the state and for the Tribe. The tourism revenues for outdoor recreation are jeopardized by such operations and stand to result in significant losses to the near $180 million in annual revenue currently generated.

The North Dakota laws and regulations that pertain to these operations should require careful consideration be given to the location. Location selection can directly mitigate or aggravate environmental, health and economic risks. The amendments to the North Dakota Century Code proposed by Senate Bill 2216 support a less restrictive regulatory process and a less restrictive legal definition relevant to

location. This increases the likelihood that such operations could be located where they would do the most harm to water sources, soil, and most significantly individual health. Any amendments to the North Dakota Century Code should require these proposed operations to be placed in locations where they will not jeopardize the environment, the health of people or the economic interests of others in the region. Both the state and the Tribe have an interest in protecting our people, our cultural resources and our natural resources above all else.

In closing, I would like to stress to your that the tribal interests in opposing such agricultural and commercial operations are significant. As citizens of the larger state of North Dakota, it is important that the Tribe speak out against agricultural or commercial projects that disrupt our way of life, the way of life of our fellow citizens, and that place the people of the region at risk of negative health consequences. For these reasons, regulatory controls should not be diminished, as proposed, and if anything should be enhanced. We therefore respectfully request that you vote no on Senate Bill 2216.

Testimony in Favor of 2216 Phil Murphy for NDSGA

Our understanding of 2216 is that it more clearly defines a zoned boundary which in turn allows a starting point for animal feeding operation setback requirements. If that is the case, we support the passage of this bill.

Testimony on 2216 Phil Murphy, NDSGA

The soybean industry recognizes that animal feeding operations can be important to the bottom line for our producers and wish to support measures that help such operations be successful. 2216 appears to be such a measure. Our interpretation is that this bill helps define the line that setbacks can be measured from. Such clarity can only help all parties go through the process knowing the rules. If that is indeed the case, we stand in firm support.

2021 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Fort Union Room, State Capitol

SB 2216
1/29/2021

relating to the definition of location for animal feeding operations

Chair Luick called the meeting to order at 9:03 a.m. All members were present. Senators Luick, Myrdal, Klein, Lemm, O. Larsen, and Hogan.

Discussion Topics:

- The purpose of the bill
- Creating more clarity on boundaries

Senator Klein moved a DO PASS [9:05].
Senator Myrdal seconded the motion [9:06].
[9:09]

Senators	Vote
Senator Larry Luick	Y
Senator Janne Myrdal	Y
Senator Kathy Hogan	Y
Senator Jerry Klein	Y
Senator Oley Larsen	Y
Senator Randy D. Lemm	Y

Motion passed: 6-0-0

Senator Lemm will carry the bill [9:10].
Chair Luick closed the meeting at 9:11 a.m.

Alice Delzer, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2216: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the Eleventh order on the calendar.

2021 HOUSE AGRICULTURE

SB 2216

2021 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

SB 2216
3/5/2021

Relating to the definition of location for animal feeding operations

Chair D. Johnson opened the hearing at 9:00 a.m.

Attendance	P or Ab
Chair D. Johnson	P
Vice Chair Trottier	P
Representative Beltz	P
Representative Buffalo	P
Representative Dobervich	P
Representative Fisher	P
Representative Headland	P
Representative Kiefert	P
Representative Richter	P
Representative Satrom	P
Representative Schreiber-Beck	P
Representative Skroch	P
Representative Thomas	P
Representative Tveit	P

Discussion Topics:

- Setback identification
- Current law clarification

Senator Luick, Bill Sponsor introduced the bill

Emmery Mehlhoff, ND Farm Bureau testified in support-Attachment #7508

Tyler Leverington, Attorney from Ohnstad-Twitchell testified in support-Attachment #7477

Tom Bodine, Deputy Agriculture Commissioner, ND Department of Agriculture testified in support-Attachment #7362

Julie Ellingson, Executive Vice President, ND Stockmen's Association testified in support

Chair D. Johnson closed the hearing at 9:17 a.m.

Representative Headland moved to amend by adding an Emergency Clause.

Representative Schreiber-Beck seconded the motion.

Voice vote. Motion carried

Representative Tveit moved Do Pass as amended.

Representative Fisher seconded the motion

Vote	
Chair D. Johnson	Y
Vice Chair Trottier	Y
Representative Beltz	Y
Representative Fisher	Y
Representative Headland	Y
Representative Kiefert	Y
Representative Richter	Y
Representative Satrom	Y
Representative Schreiber-Beck	Y
Representative Skroch	Y
Representative Thomas	Y
Representative Tveit	Y
Representative Buffalo	Y
Representative Dobervich	Y

Roll call vote. Motion carried 14-0-0. Representative Fisher is the carrier.

Additional written testimony: #7083, 7379, 7465

Chair D. Johnson adjourned at 9:20 a.m.

ReMae Kuehn, Committee Clerk

DP 3/5/21
1 of 1

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Adopted by the House Agriculture Committee

March 5, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2216

Page 1, line 3, after "operations" insert "; and to declare an emergency"

Page 1, after line 14, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2216: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2216 was placed on the Sixth order on the calendar.

Page 1, line 3, after "operations" insert "; and to declare an emergency"

Page 1, after line 14, insert:

"**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

ndfb.org

House Agriculture – SB 2216

Emmery Mehlhoff, NDFB Public Policy Liaison

March 5th, 2021

Chairman Johnson and members of the committee,

My name is Emmery Mehlhoff and I represent the North Dakota Farm Bureau. NDFB supports SB 2216.

SB 2216 is a clarification of the language and the intent of the law. The need for this bill came out of a recent court case where the court held it could not find a definition for the current language in code. This is a technical change in response to that confusion and is not a substantive change in law.

I would like to introduce Tyler Leverington from Ohnstad-Twitchell to provide some background and explain the need for this technical change.

Fargo
1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 | 1-800-367-9668

Bismarck
4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 | 1-800-932-8869

Tyler Leverington
Ohnstad Twichell, P.C.
444 Sheyenne Street, Ste. 102
West Fargo, North Dakota 58078

I will be appearing virtually to provide oral testimony at the March 5th, 2021 meeting of the House Agriculture Committee at the invitation of Chairman Johnson to provide information regarding the reasons for and implications of the language tweaks proposed by Senate Bill No. 2216. The proposed language tweaks will not change the meaning of the relevant statute but will clarify the statute by replacing a reference to land zoned for a certain "purpose" with the more technically correct term "zoning district."

This change will avoid unnecessary confusion and ensure N.D.C.C. § 58-03-11.1 is read consistently with its sister-statute N.D.C.C. § 58-03-11 which authorizes townships to create zoning districts.

Respectfully,

/s/ Tyler Leverington

7362

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STATE CAPITOL
600 E. BOULEVARD AVE. – DEPT. 602
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Tom Bodine
Deputy Agriculture Commissioner
House Agriculture Committee
March 5, 2021

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SB 2216 improves the clarification for identifying when setbacks need to be implemented when animal feeding operations are developing. We applaud the sponsors of this bill for creating greater transparency in the law.

Chairman Johnson and committee members, thank you for your consideration of SB 2216. I will stand for any questions about this or the zoning review program.

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Senate Bill 2216

To the Chairman and Members of the Committee,

Dakota Resource Council would like to submit the following neutral testimony to Senate Bill 2216. DRC has more than 650 members statewide and was founded in the 1970s to promote sustainable use of North Dakota's natural resources and family-owned and operated agriculture. We also take an active role in advocating for our rancher members interests and advocate for practices that would improve the quality of life for them and their enterprises.

SB2216 may create an unintended consequence. We are aware that this bill is intended to make all zoning language from the township level to the state level consistent in the century code but we need to ask a very important question before we pass this bill. To what extent are townships currently zoned? We would ask that if townships are not currently zoned properly that some appropriations could be spent on educating them about the process. How much time and energy will need to be spent rezoning hundreds of townships across the state? We would respectfully ask that townships are given until Jan 1st 2023 to comply with the law change and make their decision to zone accordingly.

We would urge the House Ag Committee to look at the entire picture before passing the bill.

Sam Wagner

Dakota Resource Council, Ag and Food Organizer.