

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1420
(Representatives Brandenburg, Aarsvold, Froelich)
(Senator Erbele)

AN ACT to create and enact section 11-33-02.1, a new section to chapter 11-33, section 58-03-11.1, and a new section to chapter 58-03 of the North Dakota Century Code, relating to regulations by a board of county commissioners and by a board of township supervisors; and to amend and reenact section 11-33-02, subdivision c of subsection 2 of section 23-25-11, and section 58-03-11 of the North Dakota Century Code, relating to the designation of districts by a board of county commissioners and to the establishment of districts by a board of township supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-02 of the North Dakota Century Code is amended and reenacted as follows:

11-33-02. Board of county commissioners to designate districts - Uniformity.

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution all or any parts of the county, subject to ~~section~~ sections 11-33-02.1 and 11-33-20, into districts of such number, shape, and area as may be determined necessary, and likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.~~
2. ~~A board of county commissioners may regulate the nature and scope of concentrated feeding operations permissible in the county; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.~~
3. ~~A regulation may not preclude the development of a concentrated feeding operation in the county. A regulation addressing the development of a concentrated feeding operation in the county may set reasonable standards, based on the size of the operation, to govern its location.~~
4. ~~For purposes of this section, "concentrated 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. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~
5. ~~A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.~~

6. ~~This chapter does not include any power relating to the establishment, repair, and maintenance of highways or roads.~~

SECTION 2. Section 11-33-02.1 of the North Dakota Century Code is created and enacted as follows:

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

1. For purposes of this section:

- a. "Concentrated 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. The term does not include normal wintering operations for cattle.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.

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

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- d. One cow-calf pair equals 1.0 animal unit;
- e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- g. One horse equals 2.0 animal units;
- h. One sheep or lamb equals 0.1 animal unit;
- i. One turkey equals 0.0182 animal unit;

- j. One chicken, other than a laying hen, equals 0.008 animal unit;
 - k. One laying hen equals 0.012 animal unit;
 - l. One duck equals 0.033 animal unit; and
 - m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
- 3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.
 - 4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.
 - 5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
 - 6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
 - 7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
 - 8.
 - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
 - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
 - c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
 - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 3. A new section to chapter 11-33 of the North Dakota Century Code is created and enacted as follows:

Highways - Roads. This chapter does not include any power relating to the role of the board of county commissioners in the establishment, repair, or maintenance of highways or roads.

SECTION 4. AMENDMENT. Subdivision c of subsection 2 of section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either ~~section 11-33-02 or 58-03-11~~ 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for

compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

SECTION 5. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - ~~Limitation—Scope of zoning regulations and restrictions~~ Uniformity.

1. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.
2. ~~A regulation or restriction may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.~~
3. ~~A board of township supervisors may regulate the nature and scope of concentrated feeding operations permissible in the township; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.~~
4. ~~A regulation may not preclude the development of a concentrated feeding operation in the township. A regulation addressing the development of a concentrated feeding operation in the township may set reasonable standards, based on the size of the operation, to govern its location.~~
5. ~~For purposes of this section, "concentrated 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. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~
6. ~~A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.~~

7. ~~Sections 58-03-11 through 58-03-15 do not include any power relating to the establishment, repair, and maintenance of highways or roads.~~

SECTION 6. Section 58-03-11.1 of the North Dakota Century Code is created and enacted as follows:

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

1. For purposes of this section:

- a. "Concentrated 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. The term does not include normal wintering operations for cattle.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
 - (1) The production of timber or forest products; or
 - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the department of health.

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

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- d. One cow-calf pair equals 1.0 animal unit;
- e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- g. One horse equals 2.0 animal units;
- h. One sheep or lamb equals 0.1 animal unit;
- i. One turkey equals 0.0182 animal unit;

- j. One chicken, other than a laying hen, equals 0.008 animal unit;
- k. One laying hen equals 0.012 animal unit;
- l. One duck equals 0.033 animal unit; and
- m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.
- 3. A board of township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 4. A regulation may not preclude the development of a concentrated feeding operation in the township.
- 5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
- 6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
- 7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
- 8.
 - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
 - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned for residential, recreational, or nonagricultural commercial uses.
 - c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section 23-25-11.
 - d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

SECTION 7. A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

Highways - Roads. Sections 58-03-11 through 58-03-15 do not include any power relating to the role of the board of township supervisors in the establishment, repair, or maintenance of highways or roads.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1420.

House Vote: Yeas 71 Nays 21 Absent 2

Senate Vote: Yeas 34 Nays 11 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State