

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1115

Introduced by

Representatives Devlin, D. Johnson, Pollert, Weisz

Senators Lemm, Wanzek

1 A BILL for an Act to create and enact sections 4.1-01-24 and 4.1-01-25 of the North Dakota
2 Century Code, relating to zoning of animal feeding operations and regulation of odors from
3 agricultural operations and animal feeding operations by the agriculture commissioner; and to
4 amend and reenact sections 11-33-02.1 and 11-33-22, subsection 1 of section 23.1-06-09, and
5 sections 23.1-06-15, 44-04-32, 58-03-11.1, and 58-03-17 of the North Dakota Century Code,
6 relating to zoning of animal feeding operations and regulation of odors from agricultural
7 operations and animal feeding operations; and to repeal section 23.1-01-10 of the North Dakota
8 Century Code, relating to a central repository for concentrated animal feeding operations zoning
9 regulations.

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

11 **SECTION 1.** Section 4.1-01-24 of the North Dakota Century Code is created and enacted
12 as follows:

13 **4.1-01-24. Zoning regulation of concentrated animal feeding operations - Central**
14 **repository.**

15 The commissioner shall establish, operate, and maintain an electronically accessible central
16 repository for all county and township zoning regulations that pertain to concentrated animal
17 feeding operations. The county auditor of a county and a township clerk of a township having a
18 zoning regulation that pertains to concentrated animal feeding operations shall file the
19 regulation with the department for inclusion in the central repository.

20 **SECTION 2.** Section 4.1-01-25 of the North Dakota Century Code is created and enacted
21 as follows:

22 **4.1-01-25. Regulation of odors - Animal feeding operations - Rules.**

23 1. In areas located within a city or the area over which a city has exercised extraterritorial
24 zoning under section 40-47-01.1, an agricultural operation, as defined in section

42-04-01, or animal feeding operation may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation has been in operation for more than one year, and the property of the person making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [152.40 meters] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, an agricultural operation, as defined in section 42-04-01, or an animal feeding operation may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

- a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
- b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
- 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 11-33-02.1 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, 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 pre-existing facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the commissioner, and only by inspectors certified by the commissioner who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the agriculture commissioner may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The commissioner shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the commissioner may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the commissioner. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the commissioner. An owner or operator of a lagoon or waste storage pond permitted by the commissioner is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these

1 exemptions, all persons shall manage their property and systems to minimize the
2 impact of odors on their neighbors.

3 5. This section does not apply to chemical compounds that can be individually measured
4 by instruments, other than a scentometer, which have been designed and proven to
5 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
6 a reasonable degree of scientific certainty, and for which the commissioner has
7 established a specific limitation by rule.

8 6. For purposes of this section, a public park is a park established by the federal
9 government, state, or a political subdivision of the state in the manner prescribed by
10 law. For purposes of this section, a campground is a public or private area of land
11 used exclusively for camping and open to the public for a fee on a regular or seasonal
12 basis.

13 7. a. In a county that does not regulate the nature, scope, and location of an
14 agricultural operation, as defined in section 42-04-01, or an animal feeding
15 operation under section 11-33-02.1, the commissioner shall require any new
16 agricultural operation or new animal feeding operation permitted under chapter
17 61-28 be set back from any existing residence, church, school, business, public
18 building, park, or campground.

19 (1) If there are fewer than three hundred animal units, there is no minimum
20 setback requirement.

21 (2) If there are at least three hundred animal units but no more than one
22 thousand animal units, the setback for any animal operation is one-half mile
23 [.80 kilometer].

24 (3) If there are at least one thousand one animal units but no more than two
25 thousand animal units, the setback for a hog operation is three-fourths mile
26 [1.20 kilometers] and the setback for any other animal operation is one-half
27 mile [.80 kilometer].

28 (4) If there are at least two thousand one animal units but no more than five
29 thousand animal units, the setback for a hog operation is one mile
30 [1.60 kilometers] and the setback for any other animal operation is three-
31 fourths mile [1.20 kilometers].

(5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].

b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.

c. For purposes of this section:

(1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

(2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;

(3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

(4) One cow-calf pair equals 1.0 animal unit;

(5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

(6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;

(7) One horse equals 2.0 animal units;

(8) One sheep or lamb equals 0.1 animal unit;

(9) One turkey equals 0.0182 animal unit;

(10) One chicken, other than a laying hen, equals 0.008 animal unit;

(11) One laying hen equals 0.012 animal unit;

(12) One duck equals 0.033 animal unit; and

(13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless

the animal feeding operation existed by January 1, 2021, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.

e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.

8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.

9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02.1 and 58-03-11.1.

SECTION 3. AMENDMENT. Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. For purposes of this section:

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

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for at least forty-five days in a twelve-month period; and
- (2) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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 an animal 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 environmental quality.

2. For purposes of this section, animal units are determined as as provided in subdivision c of subsection 7 of section ~~23.1-06-154.1-01-25~~.

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 an animal 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 animal feeding operations based on the size of the operation and the species and type being fed.

- 1 7. If a regulation would impose a substantial economic burden on an animal feeding
2 operation in existence before the effective date of the regulation, the board of county
3 commissioners shall declare that the regulation is ineffective with respect to any
4 animal feeding operation in existence before the effective date of the regulation.
- 5 8. a. A board of county commissioners may establish high-density agricultural
6 production districts in which setback distances for animal feeding operations and
7 related agricultural operations are less than those in other districts.
- 8 b. A board of county commissioners may establish, around areas zoned for
9 residential, recreational, or nonagricultural commercial uses, low-density
10 agricultural production districts in which setback distances for animal feeding
11 operations and related agricultural operations are greater than those in other
12 districts; provided, the low-density agricultural production districts may not extend
13 more than one and one-half miles [2.40 kilometers] from the edge of the area
14 zoned for residential, recreational, or nonagricultural commercial uses.
- 15 c. The setbacks provided for in this subsection may not exceed those established in
16 subdivision a of subsection 7 of section ~~23.1-06-154.1-01-25~~ unless the county
17 can demonstrate compelling, objective evidence specific to the county which
18 requires a greater setback within the county, in which case the setbacks may
19 exceed those established in subdivision a of subsection 7 of
20 section ~~23.1-06-154.1-01-25~~ by no more than fifty percent. If a setback under this
21 subsection is greater than the corresponding setback established in subdivision a
22 of subsection 7 of section ~~23.1-06-154.1-01-25~~, a person whose animal feeding
23 operation will be or has been affected by the applicable county ordinance may
24 request the agriculture commissioner review the ordinance. After the review, the
25 agriculture commissioner shall provide a summary of the review to the attorney
26 general and request an opinion from the attorney general regarding whether the
27 ordinance and setback are lawful.
- 28 d. For purposes of this subsection, a "related agricultural operation" means a facility
29 that produces a product or byproduct used by an animal feeding operation.
- 30 9. A person intending to construct an animal feeding operation may petition the board of
31 county commissioners for a determination whether the animal feeding operation would

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

- 22 a. Regulate or impose zoning restrictions or requirements on animal feeding
23 operations or other agricultural operations except as expressly permitted under
24 this section; or
25 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or
26 requirements on animal feeding operations.

27 **SECTION 4. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **11-33-22. Regulation of animal feeding operations - Central repository.**

30 Any zoning regulation that pertains to an animal feeding operation, as defined in section
31 11-33-02.1, is not effective until filed with the ~~department of environmental quality~~agriculture

1 commissioner for inclusion in the central repository established under section
2 23.1-01-1004.1-01-24.

3 **SECTION 5. AMENDMENT.** Subsection 1 of section 23.1-06-09 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. A person may not construct, install, modify, use, or operate an air contaminant source
6 designated by regulation, capable of causing or contributing to air pollution, either
7 directly or indirectly, without a permit from the department or in violation of any
8 conditions imposed by the permit, except the department may not require a permit for
9 the discharge of odorous air contaminants by an agricultural operation or animal
10 feeding operation subject to section 4.1-01-25.

11 **SECTION 6. AMENDMENT.** Section 23.1-06-15 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-06-15. Regulation of odors - Rules.**

14 1. In areas located within a city or the area over which a city has exercised extraterritorial
15 zoning as defined in section 40-47-01.1, a person, other than an agricultural operation
16 or an animal feeding operation subject to section 4.1-01-25, may not discharge into
17 the ambient air any objectionable odorous air contaminant that measures seven odor
18 concentration units or higher outside the property boundary where the discharge is
19 occurring. ~~If an agricultural operation as defined by section 42-04-01 has been in-~~
20 ~~operation for more than one year, as provided by section 42-04-02, and the person-~~
21 ~~making the odor complaint was built or established after the agricultural operation was~~
22 ~~established, the measurement for compliance with the seven odor concentration units-~~
23 ~~standard must be taken within one hundred feet [30.48 meters] of the subsequently~~
24 ~~established residence, church, school, business, or public building making the~~
25 ~~complaint rather than at the property boundary of the agricultural operation. The-~~
26 ~~measurement may not be taken within five hundred feet [.15 kilometer] of the property~~
27 ~~boundary of the agricultural operation.~~
28 2. In areas located outside a city or outside the area over which a city has exercised
29 extraterritorial zoning as defined in section 40-47-01.1, a person, other than an
30 agricultural operation or an animal feeding operation subject to section 4.1-01-25, may
31 not discharge into the ambient air any objectionable odorous air contaminant that

causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

- a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
- b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; ~~or~~
- 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 11-33-02.1 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 pre-existing facility.~~

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor

1 management plan and best management practices to address the apparent violation.
2 The department shall give the owner or operator at least fifteen days to implement the
3 odor management plan. If the odor problem persists, the department may proceed
4 with an enforcement action provided at least two certified inspectors at the same time
5 each measure a violation and then confirm the violation by a second odor
6 measurement taken by each certified inspector, at least fifteen minutes, but no more
7 than two hours, after the first measurement.

8 4. A person is exempt from this section while spreading or applying animal manure or
9 other recycled agricultural material to land in accordance with a nutrient management
10 plan approved by the department of environmental quality. A person is exempt from
11 this section while spreading or applying animal manure or other recycled agricultural
12 material to land owned or leased by that person in accordance with rules adopted by
13 the department. An owner or operator of a lagoon or waste storage pond permitted by
14 the department is exempt from this section in the spring from the time when the cover
15 of the permitted lagoon or pond begins to melt until fourteen days after all the ice
16 cover on the lagoon or pond has completely melted. Notwithstanding these
17 exemptions, all persons shall manage their property and systems to minimize the
18 impact of odors on their neighbors.

19 5. This section does not apply to chemical compounds that can be individually measured
20 by instruments, other than a scentometer, that have been designed and proven to
21 measure the individual chemical or chemical compound, such as hydrogen sulfide, to
22 a reasonable degree of scientific certainty, and for which the department of
23 environmental quality has established a specific limitation by rule.

24 6. For purposes of this section:

- 25 a. "Business" means a commercial building used primarily to carry on a for-profit or
26 nonprofit business which is not residential and not used primarily to manufacture
27 or produce raw materials, products, or agricultural commodities;
28 b. "Campground" means a public or private area of land used exclusively for
29 camping and open to the public for a fee on a regular or seasonal basis;
30 c. "Church" means a building owned by a religious organization and used primarily
31 for religious purposes;

d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;

e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and

f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.

~~7. a. In a county or township that does not regulate the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.~~

~~(1) If there are fewer than three hundred animal units, there is no minimum setback requirement.~~

~~(2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].~~

~~(3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].~~

~~(4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].~~

~~(5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].~~

~~b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.~~

e. For purposes of this section:

- (1) ~~One mature dairy cow, whether milking or dry, equals 1.33 animal units;~~
- (2) ~~One dairy cow, heifer or bull, other than an animal described in paragraph 1- equals 1.0 animal unit;~~
- (3) ~~One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;~~
- (4) ~~One cow-calf pair equals 1.0 animal unit;~~
- (5) ~~One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;~~
- (6) ~~One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;~~
- (7) ~~One horse equals 2.0 animal units;~~
- (8) ~~One sheep or weaned lamb equals 0.1 animal unit;~~
- (9) ~~One turkey equals 0.0182 animal unit;~~
- (10) ~~One chicken equals 0.01 animal unit;~~
- (11) ~~One duck or goose equals 0.2 animal unit; and~~
- (12) ~~Any weaned livestock not listed in paragraphs 1 through 11 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.~~

d. ~~In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.~~

e. ~~An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding~~

1 operation commences within three years from the date the application is-
2 submitted. Unless there is a change to the location of the proposed animal-
3 feeding operation, this exemption remains in effect if the department requires the-
4 applicant to submit a revised application.

5 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five-
6 percent on one occasion without triggering a higher setback distance.

7 9. A county or township may not regulate or impose restrictions or requirements on-
8 animal feeding operations or other agricultural operations except as permitted under-
9 sections 11-33-02.1 and 58-03-11.1.

10 **SECTION 7. AMENDMENT.** Section 44-04-32 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **44-04-32. Animal feeding operation record requests.**

13 The ~~department of environmental quality~~agriculture commissioner shall keep a written
14 record of each individual who requests information and the type of information requested
15 regarding an animal feeding operation permit. Within seven business days of receiving the
16 request, the ~~department~~commissioner shall provide written notice to the owner and operator of
17 the animal feeding operation describing the type of information that has been requested and the
18 name and address of the requester. If an individual makes inquiries on more than three files in
19 any one request, the ~~department~~commissioner shall charge the individual a fee sufficient to
20 cover the cost of mailing the notice to the owners and operators whose files are being examined
21 and a fee for copying the records as allowed under section 44-04-18.

22 **SECTION 8. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**
25 **Definitions.**

26 1. For purposes of this section:

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

- 1 (1) Animals, other than aquatic animals, have been, are, or will be stabled or
2 confined and fed or maintained for a total of forty-five days or more in any
3 twelve-month period; and
- 4 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained
5 in the normal growing season over any portion of the lot or facility.
- 6 b. "Farming or ranching" means cultivating land for the production of agricultural
7 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.
8 The term does not include:
- 9 (1) The production of timber or forest products; or
10 (2) The provision of grain harvesting or other farm services by a processor or
11 distributor of farm products or supplies in accordance with the terms of a
12 contract.
- 13 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,
14 elk, fur animals raised for their pelts, and any other animals that are raised, fed,
15 or produced as a part of farming or ranching activities.
- 16 d. "Location" means the setback distance between a structure, fence, or other
17 boundary enclosing an animal feeding operation, including its animal waste
18 collection system, and the nearest occupied residence, the nearest buildings
19 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,
20 recreational, or commercial purposes. The term does not include the setback
21 distance for the application of manure or for the application of other recycled
22 agricultural material under a nutrient management plan approved by the
23 department of environmental quality.
- 24 2. For purposes of this section, animal units are determined as provided under
25 subdivision c of subsection 7 of section ~~23.1-06-154.1-01-25~~.
- 26 3. A board of township supervisors may not prohibit or prevent the use of land or
27 buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 28 4. A regulation may not preclude the development of an animal feeding operation in the
29 township.
- 30 5. A board of township supervisors may not prohibit the reasonable diversification or
31 expansion of a farming or ranching operation.

- 1 6. A board of township supervisors may adopt regulations that establish different
- 2 standards for the location of animal feeding operations based on the size of the
- 3 operation and the species and type being fed.
- 4 7. If a regulation would impose a substantial economic burden on an animal feeding
- 5 operation in existence before the effective date of the regulation, the board of township
- 6 supervisors shall declare that the regulation is ineffective with respect to any animal
- 7 feeding operation in existence before the effective date of the regulation.
- 8 8. a. A board of township supervisors may establish high-density agricultural
- 9 production districts in which setback distances for animal feeding operations and
- 10 related agricultural operations are less than those in other districts.
- 11 b. A board of township supervisors may establish, around areas zoned for
- 12 residential, recreational, or nonagricultural commercial uses, low-density
- 13 agricultural production districts in which setback distances for animal feeding
- 14 operations and related agricultural operations are greater than those in other
- 15 districts; provided, the low-density agricultural production districts may not extend
- 16 more than one-half mile [0.80 kilometer] from the edge of the area zoned for
- 17 residential, recreational, or nonagricultural commercial uses.
- 18 c. The setbacks provided for in this subsection may not exceed those established in
- 19 subdivision a of subsection 7 of section ~~23.1-06-154.1-01-25~~ unless the township
- 20 can demonstrate compelling, objective evidence specific to the township which
- 21 requires a greater setback within the township, in which case the setbacks may
- 22 exceed those established in subdivision a of subsection 7 of
- 23 section ~~23.1-06-154.1-01-25~~ by no more than fifty percent. If a setback under this
- 24 subsection is greater than the corresponding setback established in subdivision a
- 25 of subsection 7 of section ~~23.1-06-154.1-01-25~~, a person whose animal feeding
- 26 operation will be or has been affected by the applicable township ordinance may
- 27 request the agriculture commissioner review the ordinance. After the review, the
- 28 agriculture commissioner shall provide a summary of the review to the attorney
- 29 general and request an opinion from the attorney general regarding whether the
- 30 ordinance and setback are lawful.

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

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the ~~department of environmental quality~~agriculture commissioner under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The township shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of township supervisors determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the township may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the ~~department of environmental quality~~agriculture commissioner, the ~~department~~commissioner issues a final permit, and construction of the animal feeding operation commences within three years from the date the ~~department~~commissioner issues ~~its~~the final permit and any permit appeals are exhausted. A board of township supervisors may not:

- a. Regulate or impose zoning restrictions or requirements on animal feeding operations or other agricultural operations except as expressly permitted under this section; or
- b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or requirements on animal feeding operations.

1 **SECTION 9. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **58-03-17. Regulation of animal feeding operations - Central repository.**

4 Any zoning regulation that pertains to an animal feeding operation, as defined in
5 section 58-03-11.1, is not effective until filed with the ~~department of environmental-~~
6 ~~quality~~agriculture commissioner for inclusion in the central repository established under section
7 ~~23.1-01-104.1-01-24.~~

8 **SECTION 10. REPEAL.** Section 23.1-01-10 of the North Dakota Century Code is repealed.