

**HOUSE BILL NO. 1423**

Introduced by

Representatives Thomas, Beltz, Fegley, Grueneich, Kempenich

Senators Elkin, Kessel, Luick, Myrdal

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

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

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

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

8 **Definitions.**

9 1. For purposes of this section:

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

13 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
14 confined and fed or maintained for at least forty-five days in a twelve-month  
15 period; and

16 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
17 in the normal growing season over any portion of the lot or facility.

18 b. "Farming or ranching" means cultivating land for the production of agricultural  
19 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.  
20 The term does not include:

21 (1) The production of timber or forest products; or

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

- 1           c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
2           elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
3           or produced as a part of farming or ranching activities.
- 4           d. "Location" means the setback distance between a structure, fence, or other  
5           boundary enclosing an animal feeding operation, including its animal waste  
6           collection system, and the nearest occupied residence, the nearest buildings  
7           used for nonfarm or nonranch purposes, or the nearest land zoned for residential,  
8           recreational, or commercial purposes. The term does not include the setback  
9           distance for the application of manure or for the application of other recycled  
10          agricultural material under a nutrient management plan approved by the  
11          department of environmental quality.
- 12          e. "Model zoning ordinance" means the most current model zoning ordinance  
13          related to animal feeding operations published by the agriculture commissioner.  
14          The setbacks provided in subdivision a of subsection 7 of section 23.1-06-15  
15          must be identical to the setbacks provided in the model zoning ordinance.
- 16          2. For purposes of this section, animal units are determined as as provided in  
17          subdivision c of subsection 7 of section 23.1-06-15.
- 18          3. A board of county commissioners may not prohibit or prevent the use of land or  
19          buildings for farming or ranching and may not prohibit or prevent any of the normal  
20          incidents of farming or ranching.
- 21          4. A board of county commissioners may not preclude the development of an animal  
22          feeding operation in the county.
- 23          5. A board of county commissioners may not prohibit the reasonable diversification or  
24          expansion of a farming or ranching operation.
- 25          6. A board of county commissioners may adopt regulations that establish different  
26          standards for the location of animal feeding operations based on the size of the  
27          operation and the species and type being fed.
- 28          7. If a regulation would impose a substantial economic burden on an animal feeding  
29          operation in existence before the effective date of the regulation, the board of county  
30          commissioners shall declare that the regulation is ineffective with respect to any  
31          animal feeding operation in existence before the effective date of the regulation.

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

1                   general and the county has failed to revoke the ordinance or setback, the court  
2                   must award the challenging party's actual attorneys' fees, costs, and expenses.

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

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

- 1           a. Regulate or impose zoning restrictions or requirements on animal feeding  
2           operations or other agricultural operations except as expressly permitted under  
3           this section; ~~or~~
- 4           b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
5           requirements on animal feeding operations; or
- 6           c. Charge fees or expenses of any kind totaling, in the aggregate, more than five  
7           hundred dollars in connection with any permit, petition, application, or other  
8           request relating to animal feeding operations.
- 9        10. A county may rely on the North Dakota insurance reserve fund for the defense of any  
10       litigation regarding the validity of county ordinances, determinations, decisions, or  
11       objections relating to animal feeding operations, if the county's ordinances regulating  
12       animal feeding operations are identical to the model zoning ordinance. A county  
13       ordinance relating to animal feeding operations which deviates from, supplements,  
14       adds to, or fails to adopt the model zoning ordinance in its entirety may not utilize the  
15       North Dakota insurance reserve fund for any litigation arising from or relating to county  
16       ordinances, determinations, decisions, or objections relating to animal feeding  
17       operations. If a party successfully challenges the validity of a county ordinance,  
18       determination, decision, or objection related to animal feeding operations, the court  
19       shall award the reimbursement of actual attorneys' fees, costs, and expenses.
- 20       11. For each new animal feeding operation located within a county, the county must  
21       receive two percent of the cost of developing the animal feeding operation, paid from  
22       the innovation loan fund under chapter 6-09.18, when:
- 23           a. The date construction of the animal feeding operation is complete; and
- 24           b. The animal feeding operation receives its final permit or regulatory approval to  
25           operate. If a single animal feeding operation is located in more than one county,  
26           the county within which a majority of the animal feeding operation, as measured  
27           by square feet, is located must receive the cost-share from the innovation loan  
28           fund.

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

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

2       1. Except as provided in subsection 2, the department of environmental quality may not  
3       adopt any rule for the purpose of the state administering a program under the federal  
4       Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et  
5       seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource  
6       Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive  
7       Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];  
8       federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.  
9       11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or  
10      federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent  
11      than corresponding federal regulations that address the same circumstances. In  
12      adopting the rules, the department may incorporate by reference corresponding  
13      federal regulations.

14      2. The department may adopt rules more stringent than corresponding federal  
15      regulations or adopt rules where there are no corresponding federal regulations, for  
16      the purposes described in subsection 1, only if the department makes a written finding  
17      after public comment and hearing and based upon evidence in the record, that  
18      corresponding federal regulations are not adequate to protect the public health and  
19      the environment of the state. Those findings must be supported by an opinion of the  
20      department referring to and evaluating the public health and environmental information  
21      and studies contained in the record which form the basis for the department's  
22      conclusions.

23      3. If the department, upon petition by any person affected by a rule of the department,  
24      identifies rules more stringent than federal regulations or rules where there are no  
25      corresponding federal regulations, the department shall review and revise those rules  
26      to comply with this section within nine months of the filing of the petition.

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

1           stringent than corresponding federal regulations, unless the more stringent rule of the  
2           department has been adopted in compliance with this section.

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

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

8           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**

9           **Definitions.**

10          1. For purposes of this section:

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

14           (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
15           confined and fed or maintained for a total of forty-five days or more in any  
16           twelve-month period; and

17           (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
18           in the normal growing season over any portion of the lot or facility.

19           b. "Farming or ranching" means cultivating land for the production of agricultural  
20           crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

21           The term does not include:

22           (1) The production of timber or forest products; or

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

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

29           d. "Location" means the setback distance between a structure, fence, or other  
30           boundary enclosing an animal feeding operation, including its animal waste  
31           collection system, and the nearest occupied residence, the nearest buildings

1 used for nonfarm or nonranch purposes, or the nearest land zoned as a  
2 residential, recreational, or commercial zoning district. The term does not include  
3 the setback distance for the application of manure or for the application of other  
4 recycled agricultural material under a nutrient management plan approved by the  
5 department of environmental quality.

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

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

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

6 c. The setbacks provided for in this subsection may not exceed those established in  
7 subdivision a of subsection 7 of section 23.1-06-15 unless the township can  
8 demonstrate compelling, objective evidence specific to the township created by  
9 an independent third party, which requires a greater setback within the township,  
10 in which case the setbacks may exceed those established in subdivision a of  
11 subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback  
12 under this subsection is greater than the corresponding setback established in  
13 subdivision a of subsection 7 of section 23.1-06-15, ~~a person whose animal~~  
14 ~~feeding operation will be or has been affected by the applicable township~~  
15 ~~ordinance~~ any person or party may request the agriculture commissioner to  
16 review the ordinance. After the review, the agriculture commissioner shall provide  
17 a summary of the review to the attorney general and request an opinion from the  
18 attorney general regarding whether the ordinance and setback are lawful. An  
19 opinion from the attorney general issued under this subsection governs the  
20 actions of public officials until the opinion is superseded by a court of this state.

21 d. If the attorney general issues an opinion that concludes an ordinance or setback  
22 is unlawful, and the township fails to formally revoke the ordinance or setback  
23 before a lawsuit challenging the validity of the ordinance or setback is initiated,  
24 the township may not utilize the North Dakota insurance reserve fund in  
25 connection with defending the lawsuit. If a party successfully challenges an  
26 ordinance or setback that previously has been determined to be unlawful by the  
27 attorney general and the township has failed to revoke the ordinance or setback,  
28 the court shall award the challenging party's actual attorneys' fees, costs, and  
29 expenses.

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

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

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

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

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

- 19       a. The date construction of the animal feeding operation is complete; and  
20       b. The animal feeding operation receives its final permit or regulatory approval to  
21       operate. If a single animal feeding operation is located in more than  
22       one township, the township within which a majority of the animal feeding  
23       operation, as measured by square feet, is located must receive the cost-share  
24       from the innovation loan fund.