

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2174

Introduced by

Senators Thomas, Conley, Lemm, Weston

Representatives Beltz, Hauck

1 A BILL for an Act to amend and reenact section 11-33-02.1, subdivision a of subsection 7 of
2 section 23.1-06-15, and section 58-03-11.1 of the North Dakota Century Code, relating to the
3 regulation of odors in an animal feeding operation and zoning authority over animal feeding
4 operations in counties and townships.

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

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

8 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

9 **Definitions.**

10 1. For purposes of this section:

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

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

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

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

21 The term does not include:

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

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

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

7 d. "Location" means the setback distance between a structure, fence, or other
8 boundary enclosing an animal feeding operation, including its animal waste
9 collection system, and the nearest occupied residence, the nearest buildings
10 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,
11 recreational, or commercial purposes. The term does not include the setback
12 distance for the application of manure or for the application of other recycled
13 agricultural material under a nutrient management plan approved by the
14 department of environmental quality.

15 2. For purposes of this section, animal units are determined as as provided in
16 subdivision c of subsection 7 of section 23.1-06-15.

17 3. A board of county commissioners may not prohibit or prevent the use of land or
18 buildings for farming or ranching and may not prohibit or prevent any of the normal
19 incidents of farming or ranching.

20 4. A~~Except as provided in this section, a~~ board of county commissioners may not
21 preclude the development of an animal feeding operation in the county.

22 5. A board of county commissioners may not prohibit the reasonable diversification or
23 expansion of a farming or ranching operation.

24 6. A board of county commissioners may adopt regulations that establish different
25 standards for the location of animal feeding operations based on the size of the
26 operation and the species and type being fed.

27 7. If a regulation would impose a substantial economic burden on an animal feeding
28 operation in existence before the effective date of the regulation, the board of county
29 commissioners shall declare ~~that~~ the regulation is ineffective with respect to any
30 animal feeding operation in existence before the effective date of the regulation.

- 1 8. a. A board of county commissioners may establish high-density agricultural
2 production districts in which setback distances for animal feeding operations and
3 related agricultural operations are less than those in other districts.
- 4 b. A board of county commissioners may establish, around areas zoned for
5 residential, recreational, or nonagricultural commercial uses, low-density
6 agricultural production districts in which setback distances for animal feeding
7 operations and related agricultural operations are greater than those in other
8 districts; provided, the low-density agricultural production districts may not extend
9 more than one and one-half miles [2.40 kilometers] from the edge of the area
10 zoned for residential, recreational, or nonagricultural commercial uses.
- 11 c. A board of county commissioners may not adopt or enforce setbacks applicable
12 to animal feeding operations that exceed the setback distances provided in
13 subsection 7 of section 23.1-06-15, except setback distances may be reduced or
14 extended based on the results of the odor footprint tool developed by the
15 agriculture commissioner. A county may not use an odor annoyance free
16 percentage exceeding ninety-four percent.
- 17 d. For purposes of this subsection, a "related agricultural operation" means a facility
18 that produces a product or byproduct used by an animal feeding operation.
- 19 9. a. A person intending to construct an animal feeding operation may petition the
20 board of county commissioners for a determination whether the animal feeding
21 operation would comply with zoning regulations adopted under this section and
22 filed with the department of environmental quality under section 11-33-22 before
23 the date the petition was received by the county.
- 24 b. The petition must contain a description of the nature, scope, and location of the
25 proposed animal feeding operation and a site map showing road access, the
26 location of any structure, and the distance from each structure to the nearest
27 section line.
- 28 c. If the board of county commissioners does not validly object to the petition within
29 sixty days of receipt, the animal feeding operation is deemed in compliance with
30 the county zoning regulations. If the county allows animal feeding operations as a
31 conditional use, the conditional use regulations must be limited to the board's

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

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

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

17 f. A board of county commissioners may not:

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

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

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

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

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

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

6 **SECTION 2. AMENDMENT.** Subdivision a of subsection 7 of section 23.1-06-15 of the
7 North Dakota Century Code is amended and reenacted as follows:

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

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

15 (2) If there are at least three hundred animal units but no more than one
16 thousand animal units, the setback for any animal operation is ~~one-half mile~~
17 ~~[.80 kilometer]~~ one-fourth mile [.40 kilometer].

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

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

26 (5) If there are at least five~~three~~ thousand five hundred ~~one or more~~ animal units
27 but no more than seven thousand five hundred animal units, ~~the setback for~~
28 ~~a hog operation is one and one-half miles [2.40 kilometers],~~ and the setback
29 for any other animal operation is ~~one mile [1.60 kilometers]~~ three-fourths
30 mile [1.20 kilometers].

(5) If there are at least seven thousand five hundred one animal units but no more than ten thousand animal units, the setback for any animal operation is one mile [1.60 kilometers].

(6) If there are at least ten thousand one animal units but no more than seventeen thousand five hundred animal units, the setback for any animal operation is one and one-fourth miles [2.01 kilometers].

(7) If there are at least seventeen thousand five hundred one animal units but no more than twenty-five thousand animal units, the setback for any animal operation is one and one-half miles [2.41 kilometers].

(8) If there are twenty-five thousand one or more animal units, the setback for any animal operations is one and three-fourths miles [2.82 kilometers].

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

58-03-11.1. 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 a total of forty-five days or more in any 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.

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 as a
8 residential, recreational, or commercial zoning district. The term does not include
9 the setback distance for the application of manure or for the application of other
10 recycled agricultural material under a nutrient management plan approved by the
11 department of environmental quality.

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. AExcept as provided in this section, a regulation may not preclude the development of
17 an animal feeding operation in the 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. A board of township supervisors may not adopt or enforce setbacks applicable to
7 animal feeding operations that exceed the setback distances provided in
8 subsection 7 of section 23.1-06-15, except setback distances may be reduced or
9 extended based on the results of the odor footprint tool developed by the
10 agriculture commissioner. A township may not use an odor annoyance free
11 percentage exceeding ninety-four percent.

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

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

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

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

30 d. If the board of township supervisors determines the animal feeding operation
31 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, the department issues a final permit, and construction of the animal feeding operation commences within three years from the date the department issues its final permit and any permit appeals are exhausted. Any objection or determination that subsequently is reversed, set aside, or invalidated by a court of this state, is not a valid objection or decision for the purpose of calculating a procedural timeline under this section.

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

f. A board of township supervisors may not:

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

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

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

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

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