Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2345
(Senators Wanzek, Dotzenrod, Luick)
(Representatives Brandenburg, D. Johnson, Pollert)

AN ACT to amend and reenact sections 11-33-02.1, 11-33-22, 23-25-11, 23.1-06-15, 58-03-11.1, and 58-03-17 of the North Dakota Century Code, relating to animal feeding operations and zoning regulations; to provide a report to the legislative management; to provide an effective date; to provide a contingent effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. "~~Concentrated~~Animal 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~~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 ~~a concentrated~~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 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~~provided in subdivision c of subsection 7 of section 23-25-11.

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~~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 ~~concentrated~~animal 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~~an animal 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~~animal 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~~animal 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~~animal 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~~exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the 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 ~~a concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the state department of health under section 11-33-22 before the date the petition was received by the county. 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 county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county 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 county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county 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 state department of health, 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. A board of county commissioners 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.

(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:

a. "~~Concentrated~~Animal 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~~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 ~~a concentrated~~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 ~~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~~as provided in subdivision c of subsection 7 of section 23.1-06-15.

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~~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 ~~concentrated~~animal 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~~an animal 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~~animal 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~~animal 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~~animal 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~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the county can demonstrate compelling, objective evidence specific to the county which requires a greater setback within the county, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable county ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the 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 ~~a concentrated~~an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of county commissioners 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 under section 11-33-22 before the date the petition was received by the county. 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 county commissioners does not object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county 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 county shall make a decision on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this

section, the county 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 equality, 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. A board of county commissioners 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.

SECTION 2. AMENDMENT. Section 11-33-22 of the North Dakota Century Code is amended and reenacted as follows:

11-33-22. Regulation of ~~concentrated~~ animal feeding operations - Central repository.

~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as defined in section 11-33-02.1, and which is promulgated by a county after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to ~~concentrated~~ animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

~~2. For purposes of this section:~~

~~a. "Concentrated animal 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.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

(Contingent effective date - See note) Regulation of ~~concentrated~~ animal feeding operations - Central repository.

~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and~~, as defined in section 11-33-02.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10.

~~2. For purposes of this section:~~

~~a. "Concentrated animal 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.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

SECTION 3. AMENDMENT. Section 23-25-11 of the North Dakota Century Code is amended and reenacted as follows:

23-25-11. Regulation of odors - Rules. (Contingent repeal - See note)

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person 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 as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence 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 [.15 kilometer] 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, a person 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, 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;

   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 state department of health, 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 management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department 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 state department of health. 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 department. An owner or operator of a lagoon or waste storage pond permitted by the department 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 exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

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

6. For purposes of this section~~, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is~~:

   a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;

   b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;

   c. "Church" means a building owned by a religious organization and used primarily 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, ~~and~~or location of an animal feeding operation under section ~~11-33-02~~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.

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 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~~, other than a laying hen,~~ equals ~~0.008~~0.01 animal unit;

(11) ~~One laying hen equals 0.012 animal unit;~~

~~(12)~~ One duck or goose equals ~~0.033~~0.2 animal unit; and

~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~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 section 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 operation commences within three years from the date the final permit is issued and any permit appeals are exhausted. Unless there is a change to the location of the proposed animal feeding

operation or there is a change in animal units which would result in an increase in the setbacks under this section, 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~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

SECTION 4. AMENDMENT. Section 23.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-06-15. Regulation of odors - Rules. (Contingent effective date - See note)

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person 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 as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and 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 [.15 kilometer] 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, a person 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, 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;

   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 management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department 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 department of environmental quality. 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 department. An owner or operator of a lagoon or waste storage pond permitted by the department 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 exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

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

6. For purposes of this section~~, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is~~:

   a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;

   b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;

   c. "Church" means a building owned by a religious organization and used primarily 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, ~~and~~or location of an animal feeding operation under section ~~11-33-02~~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.

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 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~~, other than a laying hen,~~ equals ~~0.008~~0.01 animal unit;

(11) ~~One laying hen equals 0.012 animal unit;~~

~~(12)~~ One duck or goose equals ~~0.033~~0.2 animal unit; and

~~(13)~~(12) Any weaned livestock not listed in paragraphs 1 through ~~12~~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 section 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 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. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections ~~11-33-02~~11-33-02.1 and ~~58-03-11~~58-03-11.1.

SECTION 5. 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. "~~Concentrated~~Animal 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~~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 ~~a concentrated~~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 state 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 subdivision a 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~~provided under subdivision c of subsection 7 of section 23-25-11.

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~~an animal 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~~animal 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~~an animal 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~~animal 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~~animal 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~~animal 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~~exceed those established in subdivision a of subsection 7 of section 23-25-11 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23-25-11 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23-25-11, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the 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 ~~a concentrated~~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 state department of health 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 state department of health, 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. 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.

(Contingent effective date - See note) Farming and ranching regulations - Requirements - Limitations - Definitions.

1. For purposes of this section:

a. "~~Concentrated~~Animal 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~~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.

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~~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 ~~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 subdivision a 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~~provided under subdivision c of subsection 7 of section 23.1-06-15.

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~~an animal 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~~animal 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~~an animal 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~~animal 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~~animal 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~~animal 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~~exceed those established in subdivision a of subsection 7 of section 23.1-06-15 unless the township can demonstrate compelling, objective evidence specific to the township which requires a greater setback within the township, in which case the setbacks may exceed those established in subdivision a of subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback under this subsection is greater than the corresponding setback established in subdivision a of subsection 7 of section 23.1-06-15, a person whose animal feeding operation will be or has been affected by the applicable township ordinance may request the agriculture commissioner review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the 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 ~~a concentrated~~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 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 equality, 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. 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.

SECTION 6. AMENDMENT. Section 58-03-17 of the North Dakota Century Code is amended and reenacted as follows:

58-03-17. Regulation of ~~concentrated~~ animal feeding operations - Central repository.

~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation, as defined in section 58-03-11.1, and which is promulgated by a township after July 31, 2007, is not effective until filed with the state department of health for inclusion in the central repository established under section 23-01-30. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the state department of health for inclusion in the central repository.

~~2. For purposes of this section:~~

~~a. "Concentrated animal 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.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

(Contingent effective date - See note) Regulation of ~~concentrated~~ animal feeding operations - Central repository.

~~1.~~ Any zoning regulation that pertains to ~~a concentrated~~an animal feeding operation ~~and which is promulgated by a township after July 31, 2007~~, as defined in section 58-03-11.1, is not effective until filed with the department of environmental quality for inclusion in the central repository established under section 23.1-01-10. ~~Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the department of environmental quality for inclusion in the central repository.~~

~~2. For purposes of this section:~~

~~a. "Concentrated animal 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.~~

~~b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.~~

SECTION 7. REPORT TO THE LEGISLATIVE MANAGEMENT - PERMIT APPLICATION APPROVALS AND DENIALS. On or before October 1, 2020, the department of environmental quality shall provide a report to the legislative management on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the first full year of the 2019-21 biennium. Through October 1, 2020, all local government entities that review animal feeding operation permit applications shall report to the department of environmental quality each permit approval and denial within thirty days of the decision to approve or deny the application.

SECTION 8. EFFECTIVE DATE - CONTINGENT EFFECTIVE DATE - EXPIRATION DATE. The portions of sections 1, 2, 5, and 6 of this Act not subject to an existing contingency become effective on August 1, 2019, and remain in effect until the legislative council receives certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. The remainder of sections 1, 2, 5, and 6 become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, the remainder of sections 1, 2, 5, and 6 of this Act become effective on the date certification is received.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2345.

Senate Vote:	Yeas 36	Nays 11	Absent 0
House Vote:	Yeas 75	Nays 14	Absent 5

Secretary of the Senate

Received by the Governor at 8:55 AM. on April 25, 2019.

Approved at 10:29 PM. on May 1, 2019.

Governor

Filed in this office this 2nd day of May, 2019,

at 10:05 o'clock A. M.

Secretary of State