

Fifty-eighth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1490**

Introduced by

Representatives Koppelman, Belter, DeKrey

Senators Klein, J. Lee, Polovitz

1 A BILL for an Act to amend and reenact section 40-47-01.1 and subsection 1 of section  
2 40-51.2-07 of the North Dakota Century Code, relating to the extraterritorial zoning authority of  
3 a city and annexation of territory by a city.

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

5 **SECTION 1. AMENDMENT.** Section 40-47-01.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative**  
8 **law judge.**

- 9 1. A city may, by ordinance, extend the application of a city's zoning regulations to  
10 any quarter quarter section of unincorporated territory if a majority of the quarter  
11 quarter section is located within the following distance of the corporate limits of the  
12 city:
- 13 a. One mile [1.61 kilometers] if the city has a population of less than five  
14 thousand.
- 15 b. Two miles [3.22 kilometers] if the city has a population of five thousand or  
16 more, but less than twenty-five thousand.
- 17 c. Four miles [6.44 kilometers] if the city has a population of twenty-five  
18 thousand or more.
- 19 2. If a quarter quarter section line divides a platted lot and the majority of that platted  
20 lot lies within the quarter quarter section, a city may apply its extraterritorial zoning  
21 authority to the remainder of that platted lot. If the majority of the platted lot lies  
22 outside the quarter quarter section, the city may not apply its extraterritorial zoning  
23 authority to any of that platted lot.

1           3. Notwithstanding subsections 1 and 2, if two or more contiguous cities, each having  
2           a population of two thousand or more, have boundaries in which the extraterritorial  
3           zoning authority of the cities may overlap, each city may extend its zoning  
4           regulations to the distance established under subsection 1 for the largest city  
5           involved.

6           4. A city exercising its extraterritorial zoning authority shall hold a zoning transition  
7           meeting if the territory to be extraterritorially zoned is currently zoned. The city's  
8           zoning or planning commission shall provide at least fourteen days' notice of the  
9           meeting to the zoning board or boards of all political subdivisions losing their  
10          partial zoning authority. The purpose of the zoning transition meeting is to review  
11          existing zoning rules, regulations, and restrictions currently in place in the territory  
12          to be extraterritorially zoned and to plan for an orderly transition. The zoning  
13          transition meeting must take place before the city's adoption of an ordinance  
14          exercising extraterritorial zoning.

15       4- 5. If two or more cities have boundaries at a distance where there is an overlap of  
16       extraterritorial zoning authority under this section, the governing bodies of the  
17       cities may enter into an agreement regarding the extraterritorial zoning authority of  
18       each city. The agreement must be for a specific term and is binding upon the  
19       cities unless the governing bodies of the cities agree to amend or rescind the  
20       agreement or unless determined otherwise by an administrative law judge in  
21       accordance with this chapter. If a dispute arises concerning the extraterritorial  
22       zoning authority of a city and the governing bodies of the cities involved fail to  
23       resolve the dispute, the dispute must be submitted to a committee for mediation.  
24       The committee must be comprised of one member appointed by the governor, one  
25       member of the governing body of each city, and one member of the planning  
26       commission of each city who resides outside the corporate city limits. The  
27       governor's appointee shall arrange and preside over the meeting and act as  
28       mediator at the meeting. A meeting may be continued until the dispute has been  
29       resolved or until the mediator determines that continued mediation is no longer  
30       worthwhile.

- 1        ~~5-~~ 6.    If the mediation committee is unable to resolve the dispute to the satisfaction of the  
2                   governing bodies of all the cities involved, the governing body of any of the cities  
3                   may petition the office of administrative hearings to appoint an administrative law  
4                   judge to determine the extraterritorial zoning authority of the cities in the disputed  
5                   area. A hearing may not be held until after at least two weeks' written notice has  
6                   been given to the governing bodies of the cities involved in the dispute. At the  
7                   hearing, the governor's appointee who mediated the meetings under subsection 4  
8                   shall provide information to the administrative law judge on the dispute between  
9                   the cities involved and any proposed resolutions or recommendations made by a  
10                  majority of the committee members. Any resident of, or person owning property in,  
11                  a city involved in the dispute or the unincorporated territory that is the subject of  
12                  the proposed extraterritorial zoning, a representative of such a resident or property  
13                  owner, and any representative of a city involved, may appear at the hearing and  
14                  present evidence on any matter to be determined by the administrative law judge.  
15                  A decision by the administrative law judge is binding upon all the cities involved in  
16                  the dispute and remains effective until the governing bodies of the cities agree to a  
17                  change in the zoning authority of the cities. The governing body of a city may  
18                  request a review of a decision of an administrative law judge due to changed  
19                  circumstances at any time ten years after the decision has become final. An  
20                  administrative law judge shall consider the following factors in making a decision  
21                  under this subsection:
- 22                  a.    The proportional extraterritorial zoning authority of the cities involved in the
  - 23                        dispute;
  - 24                  b.    The proximity of the land in dispute to the corporate limits of each city
  - 25                        involved;
  - 26                  c.    The proximity of the land in dispute to developed property in the cities
  - 27                        involved;
  - 28                  d.    Whether any of the cities has exercised extraterritorial zoning authority over
  - 29                        the disputed land;
  - 30                  e.    Whether natural boundaries such as rivers, lakes, highways, or other physical
  - 31                        characteristics affecting the land are present;

1 f. The growth pattern of the cities involved in the dispute; and

2 g. Any other factor determined to be relevant by the administrative law judge.

3 ~~6-~~ 7. For purposes of this section, the population of a city must be determined by the  
4 last official regular or special federal census. If a city has incorporated after a  
5 census, the population of the city must be determined by a census taken in  
6 accordance with chapter 40-22.

7 ~~7-~~ 8. When a portion of the city is attached to the bulk of the city by a strip of land less  
8 than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
9 disregarded when determining the extraterritorial zoning limits of the city. This  
10 subsection does not affect the ability of a city to zone land within its city limits.

11 ~~8-~~ 9. For the purposes of this section, a quarter quarter section shall be determined in  
12 the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the  
13 phrase "quarter quarter section" refers to the equivalent government lot.

14 **SECTION 2. AMENDMENT.** Subsection 1 of section 40-51.2-07 of the North Dakota  
15 Century Code is amended and reenacted as follows:

16 1. The governing body of the city shall adopt a resolution describing the property to  
17 be annexed. The resolution must include the proposed effective date of the  
18 annexation and may provide for different effective dates for different parcels of the  
19 territory. The effective date for the proposed annexation may not be later than  
20 five years after adoption of the resolution.