

Introduced by

Representatives Koppelman, Belter, DeKrey

Senators Klein, J. Lee, Polovitz

1 A BILL for an Act to amend and reenact sections 40-47-01.1 and 40-51.2-07 of the North  
2 Dakota Century Code, relating to the extraterritorial zoning authority of a city and annexation of  
3 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 partial  
10          zoning authority. The purpose of the zoning transition meeting is to review existing  
11          zoning rules, regulations, and restrictions currently in place in the territory to be  
12          extraterritorially zoned and to plan for an orderly transition. The zoning transition  
13          meeting must take place before the city's adoption of an ordinance exercising  
14          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 cities  
17       may enter into an agreement regarding the extraterritorial zoning authority of each  
18       city. The agreement must be for a specific term and is binding upon the cities  
19       unless the governing bodies of the cities agree to amend or rescind the agreement  
20       or unless determined otherwise by an administrative law judge in accordance with  
21       this chapter. If a dispute arises concerning the extraterritorial zoning authority of a  
22       city and the governing bodies of the cities involved fail to resolve the dispute, the  
23       dispute must be submitted to a committee for mediation. The committee must be  
24       comprised of one member appointed by the governor, one member of the  
25       governing body of each city, and one member of the planning commission of each  
26       city who resides outside the corporate city limits. The governor's appointee shall  
27       arrange and preside over the meeting and act as mediator at the meeting. A  
28       meeting may be continued until the dispute has been resolved or until the mediator  
29       determines that continued mediation is no longer worthwhile.

30       5- 6. If the mediation committee is unable to resolve the dispute to the satisfaction of the  
31       governing bodies of all the cities involved, the governing body of any of the cities

1 may petition the office of administrative hearings to appoint an administrative law  
2 judge to determine the extraterritorial zoning authority of the cities in the disputed  
3 area. A hearing may not be held until after at least two weeks' written notice has  
4 been given to the governing bodies of the cities involved in the dispute. At the  
5 hearing, the governor's appointee who mediated the meetings under subsection 4  
6 shall provide information to the administrative law judge on the dispute between  
7 the cities involved and any proposed resolutions or recommendations made by a  
8 majority of the committee members. Any resident of, or person owning property in,  
9 a city involved in the dispute or the unincorporated territory that is the subject of the  
10 proposed extraterritorial zoning, a representative of such a resident or property  
11 owner, and any representative of a city involved, may appear at the hearing and  
12 present evidence on any matter to be determined by the administrative law judge.  
13 A decision by the administrative law judge is binding upon all the cities involved in  
14 the dispute and remains effective until the governing bodies of the cities agree to a  
15 change in the zoning authority of the cities. The governing body of a city may  
16 request a review of a decision of an administrative law judge due to changed  
17 circumstances at any time ten years after the decision has become final. An  
18 administrative law judge shall consider the following factors in making a decision  
19 under this subsection:

- 20 a. The proportional extraterritorial zoning authority of the cities involved in the  
21 dispute;
- 22 b. The proximity of the land in dispute to the corporate limits of each city  
23 involved;
- 24 c. The proximity of the land in dispute to developed property in the cities  
25 involved;
- 26 d. Whether any of the cities has exercised extraterritorial zoning authority over  
27 the disputed land;
- 28 e. Whether natural boundaries such as rivers, lakes, highways, or other physical  
29 characteristics affecting the land are present;
- 30 f. The growth pattern of the cities involved in the dispute; and
- 31 g. Any other factor determined to be relevant by the administrative law judge.

1       ~~6-~~ 7. For purposes of this section, the population of a city must be determined by the last  
2                   official regular or special federal census. If a city has incorporated after a census,  
3                   the population of the city must be determined by a census taken in accordance  
4                   with chapter 40-22.

5       ~~7-~~ 8. When a portion of the city is attached to the bulk of the city by a strip of land less  
6                   than one hundred feet [30.48 meters] wide, that portion and strip of land must be  
7                   disregarded when determining the extraterritorial zoning limits of the city. This  
8                   subsection does not affect the ability of a city to zone land within its city limits.

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

12               **SECTION 2. AMENDMENT.** Section 40-51.2-07 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14               **40-51.2-07. Annexation by resolution of city.** The governing body of any city may  
15 adopt a resolution to annex contiguous or adjacent territory 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.
- 21               2. The governing body of the city shall publish the resolution and a notice of the time  
22                  and place the governing body will meet to hear and determine the sufficiency of  
23                  any written protests against the proposed annexation in the official newspaper  
24                  once each week for two consecutive weeks. The governing body of the city shall  
25                  mail a notice to the owner of each parcel of real property within the area to be  
26                  annexed at the person's last-known mailing address. The notice must inform  
27                  landowners of the resolution, the time and place of hearing, and the requirement  
28                  that protests must be filed in writing. The owners of any real property within the  
29                  territory proposed to be annexed within thirty days of the first publication of the  
30                  resolution may file written protests with the city auditor protesting against the  
31                  proposed annexation. No state-owned property may be annexed without the

1 written consent of the state agency or department having control of the property.  
2 The governing body of the city, at its next meeting after the expiration of the time  
3 for filing the protests, shall hear and determine the sufficiency of the protests.  
4 3. In the absence of protests filed by the owners of ~~more than~~ one-fourth or more of  
5 the territory proposed to be annexed or the owners of one-fourth or more of the  
6 assessed value of the territory proposed to be annexed as of the date of the  
7 adoption of the resolution, the territory described in the resolution becomes a part  
8 of the city. When a copy of the resolution and an accurate map of the annexed  
9 area, certified by the executive officer of the city, are filed and recorded with the  
10 county recorder, the annexation becomes effective, unless the resolution contains  
11 a later effective date. Annexation is effective for the purpose of general taxatio n  
12 on and after the first day of the next February. However, the city shall continue to  
13 classify as agricultural lands for tax purposes all lands in the annexed area which  
14 were classified as agricultural lands immediately before the annexation  
15 proceedings until those lands are put to another use.  
16 If the owners of one-fourth or more of the territory proposed to be annexed or the owners of  
17 one-fourth or more of the assessed value of the territory proposed to be annexed protest, or if a  
18 city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to  
19 be annexed protests, the city may either stop its pursuit of the annexation or submit the matter  
20 to a committee for mediation as provided in section 40-51.2-07.1.