

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1307

Introduced by

Representatives Kasper, Headland, Kempenich, Koppelman, Louser, D. Ruby, Steiner,
Motschenbacher

Senators Hogue, Myrdal, Paulson

1 A BILL for an Act to amend and reenact sections 11-09.1-04 ~~and~~, 11-09.1-05, 40-05.1-05, and
2 40-05.1-06 of the North Dakota Century Code, relating to supersession of state election laws in
3 home rule counties and cities.

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

5 **SECTION 1. AMENDMENT.** Section 11-09.1-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **11-09.1-04. Ratification by majority vote - Supersession of existing charter and**
8 **conflicting~~Ordinances in conflict with~~ state laws ~~void~~ - Exception - Filing of copies of**
9 **new charter.**

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

- 1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:
 - 7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.
 - 11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.
- 14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.
16 Sales and use taxes and gross receipts taxes levied under this chapter:
 - 17 a. Must conform in all respects with regard to the taxable or exempt status of items
18 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
19 at multiple rates with the exception of sales of manufactured homes or mobile
20 homes.
 - 21 b. May not be newly imposed or changed except to be effective on the first day of a
22 calendar quarterly period after a minimum of ninety days' notice to the tax
23 commissioner or, for purchases from printed catalogs, on the first day of a
24 calendar quarter after a minimum of one hundred twenty days' notice to the
25 seller.
 - 26 c. May not be limited to apply to less than the full value of the transaction or item as
27 determined for state sales and use tax, except for farm machinery gross receipts
28 tax purposes.
 - 29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 tax, and must be administered by the tax commissioner in accordance with the

relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section.

6. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter, a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. This subsection does not authorize a county to redesignate the elected offices of sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

~~7. Provide for all matters pertaining to county elections, except as to qualifications of electors.~~

~~8.~~ Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil and criminal penalties for violation of ordinances, resolutions, and regulations to carry

out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. This subsection does not confer any authority to regulate any industry or activity regulated by state law or by rules adopted by a state agency. This subsection is subject to the provisions of section 62.1-01-03.

~~9-8.~~ Lay out or vacate public grounds, and provide through its governing body for the construction, use, operation, designation, and regulation of a county road system.

~~10-9.~~ Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township. This subsection is subject to the provisions of section 62.1-01-03.

~~11-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

~~12-11.~~ Contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

SECTION 3. AMENDMENT. Section 40-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-05. Ratification by majority vote - Supersession of existing charter and Ordinances in conflict with state laws in conflict therewith ~~void~~ - Exception - Filing of copies of new charter.

If a majority of the qualified voters voting on the charter at the election vote in favor of the home rule charter, the charter is ratified and is the organic law of the city, and extends to all its local and city matters, unless limited by law. The charter and the ordinances made pursuant to the charter in such matters, except for matters pertaining to city elections, supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances and must be liberally construed for such purposes. Any ordinance enacted or adopted by a city pertaining to city elections under a home rule charter in conflict with state law is void. One copy of the charter ratified and approved must be filed with the secretary of state and one with the auditor of the city to remain as a part of its permanent records. ~~Thereupon-~~ The courts shall take judicial notice of the new charter upon its filing.

SECTION 4. AMENDMENT. Section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-06. Powers.

From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.
3. To levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the city at the same rate unless otherwise provided by law.
4. To levy and collect an infrastructure fee. The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by a municipality. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule city levies an infrastructure fee, the home rule city also may levy and collect green field special assessments. As used in this subsection:
 - a. "General special assessments" means special assessments levied for the purpose of maintaining existing roads and infrastructure and special assessments levied for the construction or repair of arterial roads and infrastructure that provide a benefit to the entire community.

b. "Green field special assessments" means special assessments levied for infrastructure costs associated with the development of agricultural or undeveloped property.

5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a city lodging tax, and a city restaurant tax. For purposes of this section, any taxes imposed under this section on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of this section is invalid to the extent it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform with this subsection does not affect the validity of any other portion of the charter or ordinance of the eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section. Sales and use taxes and gross receipts taxes levied under this section:

a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of manufactured homes or mobile homes.

b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.

d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

6. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

7. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.

8. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.

9. ~~To provide for all matters pertaining to city elections, except as to qualifications of electors.~~

~~10.~~ To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

~~11.~~ 10. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.

~~12.~~ 11. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof. This subsection is subject to the provisions of section 62.1-01-03.

~~13.~~ 12. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.

~~14.~~ 13. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private

1 property outside the city limits as may be permitted by state law. This subsection is
2 subject to the provisions of section 62.1-01-03.

3 ~~15.14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.

4 ~~16.15.~~ To fix the boundary limits of said city and the annexation and deannexation of territory
5 adjacent to said city except that such power shall be subject to, and shall conform with
6 the state law made and provided.

7 ~~17.16.~~ To contract with and receive grants from any other governmental entity or agency, with
8 respect to any local, state, or federal program, project, or works.

9 It is the intention of this chapter to grant and confirm to the people of all cities coming within
10 its provisions the full right of self-government in both local and city matters within the powers
11 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall
12 continue to apply to home rule cities, except insofar as superseded by the charters of such
13 cities or by ordinance passed pursuant to such charters.