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Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1474

Introduced by

Representatives Dockter, Headland, B. Koppelman, Nathe, Owens

Senators D. Larson, Poolman

A BILL for an Act to create and enact a new subsection to section 40-05-01 and a new section to chapter 40-22 of the North Dakota Century Code, relating to the authority of a county or city to levy an infrastructure tax in lieu of special assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, 40-12-02, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to levy an infrastructure tax in lieu of special assessments and special assessment fund balances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-05. Powers.

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

1. Acquire, hold, operate, and dispose of property within or without the county limits, and, subject to chapter 32-15, exercise the right of eminent domain for those purposes.
2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt limitations.
3. ~~To levy~~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 county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects.

4. ~~To levy~~Levy and collect an infrastructure tax in lieu of general special assessments on all residential and commercial utility bills, except communications company bills, for payment of infrastructure maintenance costs. If a home rule county levies an infrastructure tax, the home rule county also may levy and collect green field special assessments.

5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a county lodging tax, and a county restaurant tax. Sales and use taxes and gross receipts taxes levied under this chapter:

   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, except for farm machinery gross receipts tax purposes.

   d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a county lodging or county 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.

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.

~~5.~~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.

~~6.~~7. Provide for all matters pertaining to county elections, except as to qualifications of electors.

~~7.~~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. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.

~~8.~~9. 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.

~~9.~~10. 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.

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

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

13. As used in this section:

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.

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 2. AMENDMENT. Section 11-11-55.1 of the North Dakota Century Code is amended and reenacted as follows:

11-11-55.1. Petition or resolution for improvements - Levy of special assessments - Levy of infrastructure tax.

1. The board of county commissioners of any county, by resolution or upon receipt of a petition of sixty percent of the landowners in a defined area, outside of the limits of any incorporated city, may install the petitioned improvements as benefit the defined area, provide for the financing of the improvements, and levy special assessments for the payment of all or part of the improvements within the defined area.

2. The board of county commissioners, by resolution or upon petition of sixty percent of the qualified electors who voted in the last general election in a defined area, may levy and collect an infrastructure tax in lieu of general special assessments on all residential and commercial utility bills for payment of infrastructure maintenance costs. If a home rule county levies an infrastructure tax, the home rule county also may levy and collect green field special assessments.

3. In providing for the improvements, the county shall have the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and 40-28, and the county shall comply with the provisions of those chapters in making the improvements. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action.

4. As used in this section:

   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.

SECTION 3. A new subsection to section 40-05-01 of the North Dakota Century Code is created and enacted as follows:

Levy and collect an infrastructure tax in lieu of general special assessments on all residential and commercial utility bills, except communications company bills, for payment of infrastructure maintenance costs. If a municipality levies an infrastructure tax, the municipality also may levy and collect green field special assessments.

As used in this section:

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.

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 tax in lieu of general special assessments on all residential and commercial utility bills, except communications company bills, for payment of infrastructure maintenance costs. If a home rule city levies an infrastructure tax, the home rule city also may levy and collect green field special assessments.
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.

~~5.~~6. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

~~6.~~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.

~~7.~~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.

~~8.~~9. To provide for all matters pertaining to city elections, except as to qualifications of electors.

~~9.~~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.

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

~~11.~~12. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.

~~12.~~13. 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.

~~13.~~14. 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 property outside the city limits as may be permitted by state law.

~~14.~~15. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

~~15.~~16. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.

~~16.~~17. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

18. As used in this section:

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.

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

SECTION 5. AMENDMENT. Section 40-12-02 of the North Dakota Century Code is amended and reenacted as follows:

40-12-02. Submission of proposed ordinance by petition - Filed with city auditor - Request in petition.

1. Any proposed ordinance may be submitted to the governing body of the municipality by a petition signed by qualified electors thereof equal in number to fifteen percent of the votes cast for all candidates for the executive officer at the preceding regular municipal election. The petition must be filed in the city auditor's office and must contain a request that the ordinance set out in the petition be submitted to a vote of the qualified electors of the city if it is not passed by the governing body of the municipality.

2. Notwithstanding subsection 1, a proposed ordinance for the purpose of levying an infrastructure tax under section 6 of this Act may be submitted to the governing body of the municipality by a petition signed by sixty percent of the qualified electors who voted in the preceding municipal election. The petition must be filed in the city auditor's office and submitted to a vote of the qualified electors of the city at the next municipal election.

SECTION 6. A new section to chapter 40-22 of the North Dakota Century Code is created and enacted as follows:

Power of municipality to defray expense of improvements - Infrastructure tax.

1. Notwithstanding section 40-22-01, a municipality may levy and collect an infrastructure tax in lieu of general special assessments on all residential and commercial utility bills, except communications company bills, for payment of infrastructure maintenance costs. If a municipality levies an infrastructure tax, the municipality also may levy and collect green field special assessments.
2. As used in this section:
   a. "General special assessments" means special assessments levied for the purpose of maintaining existing roads and utilities 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.

SECTION 7. AMENDMENT. Section 40-23-21 of the North Dakota Century Code is amended and reenacted as follows:

40-23-21. Use of collections of subsequent assessments.

1. All collections of special assessments levied pursuant to sections 40-23-17 through 40-23-21 shall be credited as received to the special fund maintained by the municipality for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds which were issued to finance the improvement for which the assessments were levied, or, if no such obligations are outstanding, to such fund as the governing body may direct.
2. If a governing body of a municipality levied and collected an infrastructure tax under section 5 of this Act, the funds generated by the tax must be used for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds, which were issued to finance the improvement. The governing body of a municipality may not use funds generated by an infrastructure tax that is imposed after the effective date of this Act for the payment of

any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds, which were issued before the effective date of this Act for the purpose of financing green field special assessments, as defined in section 40-05-01.