



**NORTH DAKOTA
PLANNING ASSOCIATION**
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January 25, 2023

RE: Opposition to HB 1340 regarding home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.

Chairman Porter and members of the House Energy and Natural Resources Committee:

This statement expresses the opposition of the North Dakota Planning Association to House Bill 1340 relating to home rule in counties and cities and the limitation on authority of a political subdivision regarding firearms.

The bill proposes to amend and re-enact portions of subsections 8 and 10 of section 11-09.1-05, subsections 12 and 14 of section 40-05.1-06, and section 62.1-01-03 of the North Dakota Century Code (NDCC).

The North Dakota Planning Association takes the position that this bill needlessly restricts a city's and county's home rule authority and authority to zone.

HB 1248 from the 2021 legislative session amended Section 62.1-01-03 relating to firearms. This bill was approved and enacted as the current version of that section. It appeared that one target of that bill was a City of Fargo ordinance that prohibited the sale of firearms and ammunition as a home occupation. This ordinance is part of Fargo's regulations regarding land uses in residential zones, which prohibit several types of businesses as home occupations. There was an argument that the amended Section 62.1-01-03 voided this Fargo ordinance. The City of Fargo brought a declaratory judgment action against the State of North Dakota regarding this ordinance on the position that the state has no ordinances relating to the sale of firearms and ammunition, and thus Fargo's ordinance was not more restrictive than state law. Fargo won that lawsuit in North Dakota District Court. The court determined that Section 62.1-01-03 does not apply to or void the City of Fargo's ordinances.

HB 1340 expands the amendments that had been proposed by HB 1248 to include not only Section 62.1-01-03, but also the Century Code chapters that relate to the home rule powers of counties (11-09.1) and cities (40-05.1). The proposed amendments to these sections specifically prohibit home rule counties and cities from enacting a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

Additionally, a proposed amendment to Section 62.1-01-03 appears to be specifically in reaction to the result of the City of Fargo lawsuit noted above, as this amendment states:

"The absence of a state law restriction relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition may not be construed to allow a political subdivision, including a home rule city or county, to enact an ordinance restricting the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition."

The North Dakota Planning Association opposes HB 1340 as it finds no reason for the legislature to single out restricting a home rule county or city's authority to zone in relation to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

Home rule is enabled by Section 6, Article VII of the North Dakota constitution. One of the points of home rule is to allow political subdivisions to regulate based on local community priorities, including local community priorities related to land use and how various districts within the political subdivision will be zoned. The county or city commission or council is the appropriate venue to address local land use regulation, not the state legislature.

We note that the federal licensing procedure for firearms dealers respects local land use and zoning restrictions. The licensing and activities of firearms dealers are regulated by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, commonly referred to as the "ATF." Item 20(a) of Part A of the ATF Application for Federal Firearms License* requires the applicant for the license to certify that: "The business/activity to be conducted under the Federal Firearms Licenses is not prohibited by local law at the premises shown in item 6. This includes compliances with zoning ordinances (***Please contact your local zoning department PRIOR TO submitting application***)"

[bold, capitals, and italics in the original]

*Form 7(5310.12)/7CR(5310.16)

The North Dakota Planning Association's opposition to HB 1340 is based on how the bill affects a county's or city's home rule power and is not based on opposition to firearms ownership, sales, and related activities.

The North Dakota Planning Association strongly encourages your committee to recommend "Do Not Pass" for HB 1340.

Thank you for your consideration.



Donald Kress
Board Member at Large, NDPA