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ROLL NUMBER

DESCRIPTION

1246

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Ja Costa Rickford
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10/3/03
Date

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2003 HOUSE POLITICAL SUBDIVISIONS

HB 1246

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10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1246

House Political Subdivisions Committee

Conference Committee

Hearing Date: January 23, 2003

Tape Number	Side A	Side B	Meter #
1		X	15.9-38.1
Committee Clerk Signature <i>Micki Schmidt</i> 1-27-03			

Minutes: (15.9) TAPE 1, SIDE B:

(16.0) REP. GLEN FROSETH: We will open the hearing on HB 1246.

(16.5) REP. ALON WIELAND: Testimony in support of HB 1246. (See attachment #1)

(18.3) BIRCH BURDICK: STATE'S ATTORNEY: Testimony in support of HB 1246. (See attachment #2)

(26.5) REP. GIL HERBEL: What are animals running at large? Would cattle getting out of someone's pasture be animals running at large?

(26.6) BIRCH BURDICK: Yes.

(26.8) REP. GIL HERBEL: So if someone's cattle got out and went on to a neighbors field, presently under current law, they can't do anything about it?

(27.0) BIRCH BURDICK: There is a state law that deals with animals.

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10/3/03
Date

Page 2
House Political Subdivisions Committee
Bill/Resolution Number HB 1246
Hearing Date January 23, 2003

(28.2) REP. DALE SEYERSON: How come counties can enforce the state law? Why is it that the counties want special exceptions? It would appear to me that they're trying to become a state within a state.

(28.9) BIRCH BURDICK: The state statute which exists dealing with animals right now is vague enough to try to enforce. The kind of authority that you are suggesting, the Home Rule Charter is the authority that the cities have right now and exercise everyday throughout the state. There are some provisions under the law that say that home rule charter states and counties cannot pass laws or ordinances which would in fact violate with state laws.

(30.9) REP. DALE SEYERSON: The only comparative difference is the cities. The exception to the rule is a housing development outside the city limits.

31.7) REP. NANCY JOHNSON: In the amendment, rather than going back to a vote, to allow for the criminal and civil penalties that you can get and that we just let legislative authority say that you don't have to go back and do a vote again?

(32.1) BIRCH BURDICK: What I'm suggesting is it would take some period of time before we could in fact enact it. In our Sheriff's office, a full 10% of their calls are animal calls. It's a daily issue for the Sheriff's Dept. When the Legislature passed this law back in 1985, granting general powers to home rule counties and included the provision for penalties. I didn't see anything in the Legislative history that specifically believe in civil penalties and criminal penalties. It's my sense that the Legislature had civil and criminal in mind when it passed the word penalty. The Attorney General says it needs to be more clear.

(34.0) REP. NANCY JOHNSON: I didn't know that we had to go back and vote on it to allow it as a different county.

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House Political Subdivisions Committee
Bill/Resolution Number HB 1246
Hearing Date January 23, 2003

(34.2) **BIRCH BURDICK:** We may be required to go back and specifically amend our home rule charter to include this specific language.

(34.6) **REP. GIL HERBEL:** You said that the Sheriff's Dept.'s 10 % of their calls are animal related. If the Sheriff has no authority to do anything, what can they do to eliminate that amount of calls about animals?

(34.9) **BIRCH BURDICK:** Right now they go out and attempt to find the owner of the animal and if they can't, if no one's there, or not willing to take the animal back, they take the animal into custody. The animal, if not claimed by the owner may be in fact destroyed or adopted.

(37.6) **TERRY TRAYNOR, ASSIST. DIRECTOR OF ND ASSOCIATION OF COUNTIES:** Testified in support of HB 1246. We would be willing to work as a go between, between your committee, the sponsors, council and the State's Attorney to communicate on any amendments if that's your desire.

(38.1) **REP. GLEN FROSETH:** I think before the committee takes action on this, I'll ask the Association of Counties, the Bill sponsor and Rep.'s Eckre and Herbel, Maragos and Wieland to draft amendments. We will close the hearing on HB 1246.

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Operator's Signature

10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1246

House Political Subdivisions Committee

Conference Committee

Hearing Date: January 30, 2003

Tape Number	Side A	Side B	Meter #
2	X		14.5-20.7

Committee Clerk Signature *Micki Schmidt* 2-11-03

Minutes:

(TAPE 2: SIDE A)

(14.5) REP. GLEN FROSETH: We will open the hearing on HB 1246. I have some amendments prepared by the Association of Counties with Rep. Wieland.

(15.6) TERRY TRAYNOR, ASSISTANT DIRECTOR OF ASSOCIATION OF COUNTIES: Explained the amendments to the committee. (See attachment #1)

(17.3) REP. GLEN FROSETH: Any questions from the committee?

(17.6) REP. MARY EKSTROM: I WOULD MOVE THE AMENDMENT.

(17.7) REP. NANCY JOHNSON: I SECOND IT.

(17.8) REP. GLEN FROSETH: Any discussion? Hearing none, I'll take a voice vote on it.

14-y; 0-n; **THE AMENDMENT CARRIES.** We have the amended Bill before us, what are the committee's wishes?

(18.0) REP. MARY EKSTROM: I MOVE A DO PASS AS AMENDED.

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Yr Costa Rickford 10/3/03
Operator's Signature Date

Page 2
House Political Subdivisions Committee
Bill/Resolution Number HB 1246
Hearing Date: January 30, 2003

(18.2) REP. ANDREW MARAGOS: I SECOND IT.

(18.3) REP. GLEN FROSETH: Any committee discussion?

(18.3) REP. MIKE GROSZ: The enforcement of criminal penalties, is the word criminal appropriated?

(18.0) TERRY TRAYNOR: I know that a misdemeanor is a criminal act. Generally an infraction is not considered a criminal act. I think in this case it would be.

(18.0) REP. WILLIAM KRETSCHMAR: On line 18, it is appropriated.

(18.0) REP. GLEN FROSETH: We have a DO PASS AS AMENDED before us and I will have the clerk call the Roll Call Vote: 13-y; 1-n; 0-absent; Carrier: Rep. Ekstrom

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10/3/03
Date

30408.0101
Title.0200

Adopted by the Political Subdivisions
Committee
January 30, 2003

VR
1/31/03

HOUSE PROPOSED AMENDMENTS TO HOUSE BILL NO. 1246 POL. SUB 2-3-03

Page 1, line 3, after "11-09.1-05" insert "and section 27-05-06"

Page 1, line 4, after "county" insert "and the jurisdiction of the district court"

Page 1, line 16, replace "adopts" with "has adopted" and remove "and"

Page 1, line 17, remove "provides for the enforcement of criminal penalties in the charter"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Section 27-05-06 of the North Dakota Century Code is amended and reenacted as follows:

27-05-06. Jurisdiction of district courts. The district courts of this state have the general jurisdiction conferred upon them ~~the courts~~ by the constitution, and in the exercise of such ~~that~~ jurisdiction they ~~the courts~~ have power to issue all writs, process, and commissions provided therein or by law or which may be necessary for the due execution of the powers with which they ~~the courts~~ are vested. Such ~~The~~ courts have:

1. Common-law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil actions and proceedings.
3. All the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carrying into effect ~~their~~ ~~the courts'~~ judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.
4. Jurisdiction of appeals from all final judgments of municipal judges and from the determinations of inferior officers, boards, or tribunals, in such ~~the~~ cases and pursuant to such ~~the~~ regulations as may be prescribed by law.
5. Disputed property line proceedings pursuant to section 11-20-14.1.
6. ~~Power to hear and determine all actions and proceedings arising from the enforcement of home rule charter ordinances.~~

Renummer accordingly

Page No. 1

30408.0101

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Sh Costa Rickford
Operator's Signature

10/3/03
Date

Date: 9-30-03

Roll Call Vote #: 3

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1246

House _____ "POLITICAL SUBDIVISION" _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number 30408.0101

Action Taken Do Pass

Motion Made By Rep. Ekstrom Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froese	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Gross	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson		✓			
Alon Wieland	✓				
Bruce Eckro	✓				
Mary Ekstrom	✓				
Carol A. Niemeler	✓				
Sally M. Sandvig	✓				
Vonnie Pietsch	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Ekstrom

If the vote is on an amendment, briefly indicate intent:

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Jo Costa Rickford 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 3, 2003 2:12 p.m.

Module No: HR-20-1681
Carrier: Ekstrom
Insert LC: 30408.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1246: Political Subdivisions Committee (Rep. Froesth, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1246 was placed on the Sixth order on the calendar.

Page 1, line 3, after "11-09.1-05" insert "and section 27-05-06"

Page 1, line 4, after "county" insert "and the jurisdiction of the district court"

Page 1, line 16, replace "adopts" with "has adopted" and remove "and"

Page 1, line 17, remove "provides for the enforcement of criminal penalties in the charter"

Page 1, after line 20, insert:

"SECTION 3. AMENDMENT. Section 27-05-06 of the North Dakota Century Code is amended and reenacted as follows:

27-05-06. Jurisdiction of district courts. The district courts of this state have the general jurisdiction conferred upon ~~them~~ the courts by the constitution, and in the exercise of ~~each~~ that jurisdiction ~~they~~ the courts have power to issue all writs, process, and commissions provided therein or by law or which may be necessary for the due execution of the powers with which ~~they~~ the courts are vested. ~~Each~~ The courts have:

1. Common-law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil actions and proceedings.
3. All the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carrying into effect ~~their~~ the courts' judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.
4. Jurisdiction of appeals from all final judgments of municipal judges and from the determinations of inferior officers, boards, or tribunals, in ~~each~~ the cases and pursuant to ~~each~~ the regulations as may be prescribed by law.
5. Disputed property line proceedings pursuant to section 11-20-14.1.
6. Power to hear and determine all actions and proceedings arising from the enforcement of home rule charter ordinances.

Renumber accordingly:

(2) DESK, (2) COMM

Page No. 1

HR-20-1681

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In Costa Rickford
Operator's Signature

10/3/03
Date

2003 SENATE POLITICAL SUBDIVISIONS

HB 1246

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10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1246

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 7, 2003

Tape Number	Side A	Side B	Meter #
1	X		2868 - End
		X	0 - 1143
Committee Clerk Signature <i>Shirley Berg</i>			

Minutes:

SENATOR COOK called the committee to order. All members (6) present.

SENATOR COOK opened the hearing HB 1246 relating to powers of a home rule county and the jurisdiction of the district court.

REPRESENTATIVE ALON WIELAND, District 13, West Fargo, ND, introduced and supported HB 1246. (see attached testimony)

Birch Burdick, Cass County State's Attorney was not able to be at the hearing to testify but sent his testimony (See attached testimony)

John Olson, Attorney, representing ND State Attorneys Association, appeared in support of HB 1246. He thinks it is a good bill that counties need to add to provide sanctions to enforce ordinances.

SENATOR COOK asked if Mr Olson could give an example of an ordinance that they might put in place and put a penalty on and enforce under this law that they can not right now.

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Shirley Berg
Operator's Signature

10/3/03
Date

Page 2
Senate Political Subdivisions Committee
Bill/Resolution Number HB 1246
Hearing Date March 7, 2003

John Olson, answered dogs and cats. Dogs running at large in the counties. This only applies to home rule counties.

Other Discussion: Tape 1, Side B, Meter # 279 - 650

Wade Williams, North Dakota Association of Counties, appeared in support of HB 1246. The main problem is that counties no longer have a court to do any enforcing. Those counties that were home ruled before 1991 could use the county court to enforce their ordinances and after the consolidation there were no provisions to allow home rule counties to enter into district court to seek remedy for violations of their ordinances. This bill is trying to remedy that.

SENATOR COOK asked if counties have the right to establish their own fine.

Wade Williams answered he believed home rule counties could by ordinance set fines for dogs running at large.

SENATOR COOK asked if a home rule county could increase fines. Fines that are levied, where do they go?

Wade Williams answered that the fines go to the county general fund.

No opposition to HB 1246.

SENATOR COOK closed the Hearing on 1246.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1246

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 13, 2003 (Discussion and Action)

Tape Number	Side A	Side B	Meter #
2	X		2201 - 2695

Committee Clerk Signature *Stanley Borg*

Minutes:

SENATOR COOK called the committee to order. All members present.

SENATOR COOK told the committee they have a memo from Jack McDonald with the concern that the District Courts have that the bill cover county home rule ordinances. He said the way to clarify that would be to go to the very last sentence in the bill and insert county between the words of and home so the bill would say enforcement of county home rule ordinances. Terry Traynor thinks that is a good amendment.

SENATOR SYVERSON asked if that would cover the other issues on page 2.

Jack McDonald answered yes.

SENATOR SYVERSON moved adoption of amendment on HB 1246

SENATOR GARY LEE seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

SENATOR GARY LEE moved a DO PASS as AMENDED on HB 1246

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10/3/03
Date

5P

Page 2
Senate Political Subdivisions Committee
Bill/Resolution Number HB 1246
Hearing Date March 13, 2003

SENATOR SYVERSON seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

Carrier: **SENATOR GARY LEE**

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Jo Costa Rickford
Operator's Signature

10/8/03
Date

30408.0201
Title 0300

Adopted by the Political Subdivisions
Committee

March 13, 2003

JB
3-14-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1246

Page 2, line 18, after "of" insert "county"

Renumber accordingly

Page No. 1

30408.0201

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J. Costa Rickford
Operator's Signature

10/3/03
Date

EP

Date: 3/13/03
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 1246

Action Taken adopt amendment

Motion Made By Sen. Aguirre Seconded By Sen. Kay Lee

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	✓				
Senator John O. Syverson, V C	✓				
Senator Gary A. Lee	✓				
Senator Judy Lee	✓				
Senator Linda Christenson	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Lu Costa Rickford 10/13/03
Operator's Signature Date

Date: 2/10/03
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 1246

Action Taken Do Pass as amended

Motion Made By Sen. Gary Lee Seconded By Sen. Apperson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	✓				
Senator John O. Syverson, V C	✓				
Senator Gary A. Lee	✓				
Senator Judy Lee	✓				
Senator Linda Christenson	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Gary Lee

If the vote is on an amendment, briefly indicate intent:

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Ja Costa Rickford 10/3/03
Operator's Signature Date

EP

REPORT OF STANDING COMMITTEE (410)
March 14, 2003 2:32 p.m.

Module No: SR-46-4843
Carrier: G. Lee
Insert LC: 30406.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1246, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1246 was placed on the 86th order on the calendar.

Page 2, line 18, after "of" insert "county"

Renumber accordingly

(S) DESK, (S) COMM

Page No. 1

SR-46-4843

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10/2/03
Date

40

2003 TESTIMONY

HB 1246

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10/3/03
Date

#1 178-03



Representative Alon Wieland
District 13
P.O. Box 618
West Fargo, ND 58078-0418
alwieland@state.nd.us

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEE
Human Services
Political Subdivisions

TESTIMONY

HB 1246

Representative Alon Wieland

Chairman Froseth, Members of the Committee.

My name is Alon Wieland, Representative from the 13th District in West Fargo, and I am here to introduce and support House Bill 1246.

North Dakota cities that are Home Rule Cities are able to adopt ordinances and to enforce them, other cities may also have this power as well, but Home Rule counties are able to adopt ordinances but they are unable to enforce them.

This bill provides for Home Rule counties that adopt ordinances to be able to enforce them. Other counties that pass home rule in the future would also be able to enforce ordinances. Currently, there are 5 home rule counties in North Dakota. They are Richland, Cass, Walsh, Stutsman, and Ward.

This Bill also prevents any authority to regulate any industry or activity which is regulated by State Law or by rules adopted by a state agency.

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Y. Costa Rickford
Operator's Signature Date 10/3/03

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The penalty for a violation of an ordinance may be an infraction or a class B misdemeanor.

Mr. Chairman, Members of the Committee. I hope you will support this bill.

Thank you.

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La Costa Rickford
Operator's Signature

10/9/03
Date



#2 1-23-03

182

January 22, 2003

State's Attorney

North Dakota Legislative Assembly
House - Political Subdivisions Committee
Bismarck, ND 58505

Rich E Burdick

RE: HOUSE BILL 1246

Assistant State's Attorneys:

- Mark R. Boening
- Erett M. Shasky
- Wade L. Webb
- Tacy J. Peters
- Lori S. Mickelson
- Lisa K. McEvers
- Trent W. Mahler
- Aaron G. Blatz

Dear Committee Members:

I submit the following written testimony in support of the passage of House Bill 1246. HB 1246 provides Home Rule Charter (HRC) counties the opportunity to enact ordinances providing for criminal charges and criminal penalties.

The North Dakota Constitution, Article VII, Section 6, requires the Legislature to provide for the establishment and exercise of home rule in counties and cities. In 1985 the Legislature enacted N.D.C.C. Chapter 11-09.1 providing for HRC counties. If a county has adopted a HRC in conformance with that Chapter, then it may provide for the powers listed, among other things, in N.D.C.C. §11-09.1-05(5). That subsection provides, in pertinent part, that counties may "provide for the adoption, amendment, repeal, initiative, referral, enforcement and penalties for violation of ordinances, resolutions, and regulations..." (emphasis added).

Victim/Witness Coordinators:

- Brenda Olson-Wray
- Debbie Tibatowski

On June 27, 2002 the North Dakota Attorney General issued Letter Opinion, 2002-L-38. The Opinion noted the term "penalties" as used in N.D.C.C. §11-09.1-05(5) was not defined by the Legislature. It was unclear whether that term applied to civil and/or criminal penalties for violating county ordinances passed under a HRC. The Attorney General stated the lack of clarity in the statute "makes it questionable whether the Legislature intended to include criminal penalties". The Attorney General further stated that counties are "creatures of the North Dakota Constitution and may act only in the manner and on the matters prescribed by the Legislature in statutes and enacted pursuant to constitutional authority". Accordingly, HRC authority is limited to the powers granted by the Legislature through statutes. The Attorney General concluded that the Legislature had not granted counties authority to provide criminal punishment for violations of county ordinances passed pursuant to a HRC. The Legislature must provide a "clean grant of authority" and address numerous issues such as the maximum term of imprisonment or fine that could be imposed against someone violating the ordinance, according to the Opinion.

Check Division/Restriction:

- Linda Workin
- Charlotte Johnson

Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

PH: 701-241-5850
Fax: 701-241-5838

The issue which triggered the Attorney General's referenced Opinion related to a desire by Stutsman County to control animals running at large. A similar desire applies in Cass County. Animals running at large regularly generate a significant number of complaints received by the Cass County Sheriff's Office and represent an aggravation to the public. The issue addressed by HB 1246 would not, of course, be limited to animals at large, but

Ja Costa Rickford 10/3/03
Operator's Signature Date

could also apply to, for example, persons fostering curfew violations for minors, inappropriate use of surface waters of a river, etc.

Cities already have the power to enact and enforce criminal ordinances. For cities, that power is derived not from a HRC, but is available to all cities pursuant to the powers granted through N.D.C.C. §40-05-01(41) and §40-05-08(1).

I urge this Committee, and the Legislature as a whole, to pass HB 1248 and grant HRC counties the power to enact and enforce criminal ordinances in the same fashion that every city is empowered.

I would also encourage the Committee to consider making a change to HB 1248 which would more clearly empower the state district courts to hear cases brought beneath the newly granted powers to HRC counties. At the time the HRC statutes were enacted in 1985, there was a stratified court system, including district courts and county courts. At that time, the county courts could address the violations of county ordinances. However, in the 1990's a unified court system was established thereby eliminating the separate county courts. Without clear language, there may be an uncertainty in some jurisdictions as to whether a state court could hear violations of county ordinances.

I would further encourage the Committee to consider making such newly granted powers available to existing HRC counties, without modifying their current HRC. At present, N.D.C.C. §11-08.1-06 allows a county commission to amend its HRC through a vote of the qualified electors of the county at the next general or primary election. This can be a cumbersome process. I ask the Committee add language allowing an existing HRC county, that has otherwise been granted the power within its HRC to provide penalties for violations of ordinances, to provide for civil and criminal penalties without requiring an amendment to its existing HRC.

Thank you for your time and consideration of my testimony and HB 1248.

Yours Truly,



Birch P. Burdick
Cass County State's Attorney

BPB/lr

cc: Mr. Wayne Stenehjem
North Dakota Attorney General
Attorney General's Office
800 E. Boulevard Ave.
Bismarck, ND 58505-0040

La Costa Rickford
Operator's Signature

10/3/03
Date

#1 - 1-30-03
3:00 pm
1023 -

Testimony to the
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
Prepared January 30, 2003 by
Terry Trayner, Assistant Director
North Dakota Association of Counties

CONCERNING HOUSE BILL NO. 1246

Mr. Chairman and members of the House Political Subdivisions Committee, as requested, the North Dakota Association of Counties has worked with your sub-committee, the Cass County State's Attorney, the Legislative Council, and the State Court Administrator's Office to develop amendments to HB1246 that we hope will accomplish the changes desired by the Committee. The result of this effort is attached to this testimony and explained below.

In working with Mr. John Walstad of the Legislative Council to address the desire to make these amendments immediately applicable to existing home rule counties without formal amendment of individual charters, we are suggesting the replacement of "adopts" with "has adopted" in line 16 and the deletions proposed for lines 16 and 17. It is our belief that this change will clearly show the Legislative intent to be that the Legislature is granting this enforcement power to home rule counties and the court - it is not a change to the county's charter, which would likely require a local vote.

The addition of a new Section 3 to add to the jurisdiction of the District Court was discussed with Mr. Jim Gange of the Court Administrators Office, and appears to be sufficient to ensure their authority to address these local ordinances.

Thank you for the opportunity to work with your sub-committee, and I hope that these amendments meet the desires of the committee. As stated during the formal hearing, our Association supports this bill, and we also support these proposed amendments.

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10/3/03
Date

Proposed Amendments to House Bill No. 1246

Page 1, line 3, after "11-09.1-05" insert "and 27-05-08"

Page 1, line 4, after "county" insert "and the jurisdiction of the district court"

Page 1, line 16, replace "adopts" with "has adopted" and remove "and"

Page 1, line 17, remove "provides for the enforcement of criminal penalties in the charter"

Page 1, after line 20, insert:

"SECTION 3. Section 27-05-06 of the North Dakota Century Code is amended and read:

27-05-06. Jurisdiction of district courts. The district courts of this state have the general jurisdiction conferred upon them by the constitution, and in the exercise of such jurisdiction they have power to issue all writs, process, and commissions provided therein or by law or which may be necessary for the due execution of the powers with which they are vested. Such courts have:

1. Common-law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil actions and proceedings.
3. All the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carrying into effect their judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.
4. Jurisdiction of appeals from all final judgments of municipal judges and from the determinations of inferior officers, boards, or tribunals, in such cases and pursuant to such regulations as may be prescribed by law.
5. Disputed property line proceedings pursuant to section 11-20-14.1
6. Power to hear and determine all actions and proceedings arising from the enforcement of home rule charter ordinances.

Renumber accordingly



Representative Alon Wieland
District 13
P.O. Box 419
West Fargo, ND 58078-0412
www.alonwieland.nd.gov

NORTH DAKOTA HOUSE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58506-0180

TESTIMONY HB 1246

Representative Alon Wieland



COMMITTEE
Human Services
Political Subdivisions

Chairman Cook, Members of the Senate Political Subdivision Committee.

My name is Alon Wieland, Representative from the 13th District in West Fargo, and I am here to introduce and support House Bill 1246.

North Dakota cities that are Home Rule Cities are able to adopt ordinances and to enforce them, other cities may also have this power as well, but Home Rule counties are able to adopt ordinances but they are unable to enforce them.

This bill provides for Home Rule counties that adopt ordinances to be able to enforce them. Other counties that pass home rule in the future would also be able to enforce ordinances. Currently, there are 5 home rule counties in North Dakota. They are Richland, Cass, Walsh, Stutsman, and Ward.

This Bill also prevents any authority to regulate any industry or activity which is regulated by State Law or by rules adopted by a state agency.

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10/3/03
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EP

The penalty for a violation of an ordinance may be an infraction or a class B misdemeanor.

Mr. Chairman, Members of the Committee. I hope you will support this bill.

Thank you.

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operator's signature

10/3/03
date



**Testimony in Support
of HB 1246**

March 7, 2003

State's Attorney

**SENT VIA FAX ONLY
(701) 328-2872**

Birch B Burdick

**Sen. Dwight Cook, Chair
Senate - Political Subdivisions Committee
North Dakota Legislative Assembly
Bismarck, ND 58508**

**Assistant State's
Attorneys:**

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Brett M. Shesky
Wade L. Webb
Tracy J. Peters
Lori S. Mickelson
Lisa K. McEwen
Ther W. Mahler
Aaron G. Bink**

**RE: Testimony on House Bill 1246 -
Home Rule Charter Counties/
Power to Enforce Ordinances**

Dear Chairman Cook:

I intended on personally appearing today at 9:00 A.M. to provide testimony to the Senate Political Subdivisions Committee on the above-referenced bill. However, due to inclement weather last night in our area and slick roads early this morning, travel was not advised.

**Victim/Witness
Coordinator:**

**Brenda Olson-Wray
Debbie Tichonowski**

For that reason I respectfully request you allow me to submit testimony solely in written form. Enclosed with this letter is the testimony I intended to present personally to you at the hearing.

**Check Division/
Restitution:**

**Linda Weidie
Charlotte Johnson**

If you, or anyone on your committee, should have any questions on this matter, I would be pleased to respond to them. My telephone number and e-mail address are as follows: (701) 241-5850; burdick@cc.cass.nd.us.

Thank you for your time and consideration of my testimony.

Yours Truly,

**Birch P. Burdick
Cass County State's Attorney**

**Box 2806
211 Ninth Street South
Fargo, North Dakota 58108**

BPB:lr

Encl.: as stated

**PH: 701-241-5850
Fax: 701-241-5838**

La Costa Rickford
Operator's Signature

10/3/03
Date



**Testimony in Support
of HB 1248**

March 7, 2003

State's Attorney

North Dakota Legislative Assembly
Senate - Political Subdivisions Committee
Bismarck, ND 58505

Burch E Burdick

RE: House Bill 1248 - Home Rule Charter Counties/
Power to Enforce Ordinances

**Assistant State's
Attorneys:**

Mark R. Boering
Brett M. Shusky
Wade L. Webb
Tacy J. Peters
Lori S. Michelson
Lisa K. McEvers
Thant W. Makler
Aaron G. Elnk

Dear Committee Members:

I submit the following written testimony in support of the passage of House Bill 1248. HB 1248 provides Home Rule Charter (HRC) counties the opportunity to enact ordinances providing for criminal charges and criminal penalties.

Statutory Background

The North Dakota Constitution, Article VII, Section 8, requires the Legislature to provide for the establishment and exercise of home rule in counties and cities. In 1985 the Legislature enacted N.D.C.C. Chapter 11-09.1 providing for HRC counties. If a county has adopted a HRC in conformance with that Chapter, then it may provide for the powers listed, among other things, in N.D.C.C. §11-09.1-05(5). That subsection provides, in pertinent part, that counties may "provide for the adoption, amendment, repeal, initiative, referral, enforcement and penalties for violation of ordinances, resolutions, and regulations..." (emphasis added).

**Victim/Witness
Coordinators:**

Brenda Cline-Wray
Debbie Thielowski

Limits of Current Statutory Language - AG Opinion

**Check Division/
Restitutions:**

Linda Workin
Charlotte Johnson

On June 27, 2002 the North Dakota Attorney General issued Letter Opinion, 2002-L-38. The Opinion noted the term "penalties" as used in N.D.C.C. §11-09.1-05(5) was not defined by the Legislature. It was unclear whether that term applied to civil and/or criminal penalties for violating county ordinances passed under a HRC. The Attorney General stated the lack of clarity in the statute "makes it questionable whether the Legislature intended to include criminal penalties". The Attorney General further stated that counties are "creatures of the North Dakota Constitution and may act only in the manner and on the matters prescribed by the Legislature in statutes and enacted pursuant to constitutional authority". Accordingly, HRC authority is limited to the powers granted by the Legislature through statutes. The Attorney General concluded that the Legislature had not granted counties authority to provide criminal punishment for violations of county ordinances passed pursuant to a HRC. The Legislature must provide a "clean grant of authority" and address numerous issues such as the maximum term of imprisonment or fine that could be imposed against someone violating the ordinance, according to the Opinion.

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Fargo, North Dakota 58108

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Fax: 701-241-5838

The issue which triggered the Attorney General's referenced Opinion related to a desire by Stutsman County to control animals running at large. A similar desire applies in Cass County. Animals running at large regularly generate a

Jo Costa Rickford
Operator's Signature

10/3/03
Date

desire applies in Cass County. Animals running at large regularly generate a significant number of complaints received by the Cass County Sheriff's Office and represent an aggravation to and potential safety concern for the public. The issue addressed by HB 1246 would not, of course, be limited to animals at large, but could also apply to, for example, persons fostering curfew violations for minors, inappropriate use of surface waters of a river, etc.

Flexibility Already Granted to Cities

Cities already have the power to enact and enforce criminal ordinances. For cities, that power is derived not from a HRC, but is available to all cities pursuant to the powers granted through N.D.C.C. §40-05-01(41) and §40-05-06(1).

Similar Flexibility Needed by HRC Counties

HB 1246 grants HRC counties the power to enact and enforce criminal ordinances in the same fashion that every city is already empowered. It also ensures the District Courts have the jurisdiction to hear and decide such cases.

Furthermore, HB 1246 (First Engrossment) ensures that such newly granted powers are available to existing HRC counties, without necessarily modifying their current HRC. N.D.C.C. §11-09.1-09 allows a county commission to amend its HRC only through a vote of the qualified electors of the county at the next general or primary election. This can be a cumbersome process. Voters, such as in Cass County, have already incorporated the power to implement ordinances into their HRC. Notwithstanding the legal issue raised by the Attorney General in his above-referenced opinion, there is no reason to believe the voters presumed the county did not have an ability to enforce the ordinances it implemented. Accordingly, it seems unnecessary to return to the voters to request the power to enforce such ordinances. HB 1246 addresses this issue.

I urge this Senate Committee, and the Legislature as a whole, to pass HB 1246. Thank you for your time and consideration of my testimony.

Yours Truly,



Birch P. Burdick
Cass County State's Attorney

SPB/lr

cc: Cass County Commission
Cass County Sheriff
ND Attorney General

Ja Costa Rickford
Operator's Signature

10/3/03
Date



Thursday, March 13, 2003

MEMORANDUM

TO: REP. ALON WIELAND
FROM: Jack McDonald, ND District Court Judges Association
RE: HB 1246

As you know, the District Courts are concerned that Engrossed House Bill 1246 could be interpreted to increase the district courts' jurisdiction to cover county and city home rule ordinances. Your intent was just to have jurisdiction over home rule county ordinances and the courts don't object to that. In our discussions, you indicated you did not object to an amendment to clarify this.

Therefore, we're requesting the amendment below and would appreciate it if you could give this to the chairman of the Senate Political Subdivisions Committee, Sen. Dwight Cook, so he is assured you agree with it.

Thank you for helping on this. If you have any questions, please let me know.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL 1246

Page 2, line 18, after "of" insert "county"

Renumber accordingly

Jack McDonald
Operator's Signature

10/3/03
Date