

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1398

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1398
2/5/2015
23297

- ☐ Subcommittee
☐ Conference Committee

Omaha, Nebraska

Explanation or reason for introduction of bill/resolution:

Relating to the participation in city governing body meetings by residents of areas within the extraterritorial zoning jurisdiction of the city

Minutes:

Testimony 1,2, and 3

Chairman Klemin: Opened hearing on HB 1398

Representative Maragos: Recommend this bill to be folded into the study of HB 1258.

Opposition:

Jim Gailmorn: Testimony 1

Larry Wile: Testimony 2

Bill Wocken: Testimony 3

Chairman Klemin: Closed the hearing on HB 1398

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1398
2/5/2015
23321

- ☐ Subcommittee
☐ Conference Committee

Ammonda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the participation in city governing body meetings by residents of areas within the extraterritorial zoning jurisdiction of the city

Minutes:

Chairman Klemin: Opened hearing for discussion on HB 1398.

Representative Kelsh: If you look at HCR 3029 (I introduced it incase this bill didn't survive) it already has that language in it. I would ask to have the resolution withdrawn in this passes.

Chairman Klemin: When we have a hear on that then if you want to then you can bring up the issue of amending it that would relate to this bill.

Representative Zubke: Motioned a do not pass

Representative Klein: Seconded the motion

A Roll Call Vote was Taken: Yes 11, No 2, Absent 1 (Koppelman)

Motion carries

Representative Klein will carry the bill

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1398

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Zubke Seconded By Klein

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh		X
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	/				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	/	X			
Rep. Denton Zubke	X				

Total (Yes) 11 No 2

Absent 1 (Koppelman)

Floor Assignment Klein

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

Motion carries

REPORT OF STANDING COMMITTEE

HB 1398: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends DO NOT PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1398 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1398

Testimony Presented on House Bill 1398 to the
House Political Subdivisions Committee
Representative Lawrence Klemin, Chair
by Jim Gilmour, Director of Planning and Development
for the City of Fargo
February 5, 2015

Mr. Chairman and Members of the Committee:

The City of Fargo opposes House Bill 1398 which requires a non-voting member from the extraterritorial zoning area to serve on the governing body of the city.

This bill is not needed.

State law already requires voting members from the extraterritorial zoning area to serve on Planning Commissions, with the members appointed by the County Commission.

Zoning and subdivision approvals require public hearings. Residents and property owners of extraterritorial areas are welcome to attend these hearings and make comments on proposed changes to zoning or subdivision regulations.

The City of Fargo recommends a Do Not Pass for House Bill 1398.

HB 1398

City of West Fargo Testimony

HB 1398 provides that the governing body of a city that elects to exercise extraterritorial zoning jurisdiction under section 40-47-01.1 shall appoint at least one resident of the territory subject to the extraterritorial zoning jurisdiction of the city to serve as a nonvoting member of the governing body. The **City of West Fargo** would like to go on record as opposed to the bill for the following reasons:

- State statute already requires representation from the extraterritorial (ET) area on the West Fargo's Planning and Zoning Commission, so the City already has ET representative involvement. The number of representatives depends on the size of the city. West Fargo has three ET representatives on the Planning and Zoning Commission which are voting members.
- A city that has joint ET jurisdiction is required by State statute to send applications in that area to the affected jurisdiction (township and/or county) for their review, so adequate notice and involvement in the decision making process is already provided for.
- The City of West Fargo by policy already notifies the ET and Cass County any time an application is submitted for the ET area.
- It would appear from the language of the Bill, that the number of ET representatives would depend on how many townships and/or counties might be affected by a city's ET jurisdiction, so there may be several ET representatives required to be appointed by the governing body. West Fargo is located in Cass County, and the ET area affects five townships, so it would appear that we would have 6 jurisdictions as nonvoting members of the City Commission.
- Few applications are generally handled in West Fargo's ET, as most of the City's business pertains to the corporate limits of the city. ET representatives would be expected to attend the meetings in a nonvoting capacity when ET representatives have already had the opportunity to be involved at the Planning and Zoning Commission level.
- Any member of the public can appear and speak at application hearings before both Planning and Zoning Commission and City Commission. The individual does not need to be a City resident so ET jurisdictions already can be involved without being a nonvoting member of the City Commission.

HB 1398

North Dakota Planning Association Testimony

HB 1398 provides that the governing body of a city that elects to exercise extraterritorial zoning jurisdiction under section 40-47-01.1 shall appoint at least one resident of the territory subject to the extraterritorial zoning jurisdiction of the city to serve as a nonvoting member of the governing body. The North Dakota Planning Association would like to go on record as opposed to the bill for the following reasons:

- State statute already requires representation from the extraterritorial (ET) area on the planning and/or zoning commission, so the city already has ET representative involvement. The number of representatives depends on the size of the city.
- A city that has joint ET jurisdiction is required by State statute to send applications in that area to the affected jurisdiction (township and/or county) for their review, so adequate notice and involvement in the decision making process is already provided for.
- It would appear from the language of the Bill, that the number of ET representatives would depend on how many townships and/or counties might be affected by a city's ET jurisdiction, so there may be several ET representatives required to be appointed by the governing body.
- Few applications are generally handled in a city's ET, as most of the city's business pertains to the corporate limits of the city. ET representatives would be expected to attend the meetings in a nonvoting capacity when ET representatives have already had the opportunity to be involved at the planning and/or zoning commission level.
- Any member of the public can appear and speak at city hearings. The individual does not need to be a city resident so ET jurisdictions already can be involved without the proposed bill.

House Bill 1398
House Political Subdivisions Committee
February 5, 2015

Mr. Chairman and Members of the House Political Subdivisions Committee:

My name is Bill Wocken. I am City Administrator for the City of Bismarck. I am appearing in opposition to House Bill 1398 with the knowledge and approval of the Bismarck City Commission.

House Bill 1398 seeks to add a non-voting member to any city governing body that elects to exercise an extraterritorial zoning jurisdiction.

The City of Bismarck is opposed to this bill. We believe it is unnecessary in view of the extensive re-write of parts of the zoning and subdivision regulations dealing with extraterritorial representation accomplished by the Legislature just a few sessions ago. I have enclosed a copy of that new language in the zoning chapter for your ease of reference (NDCC 40-47-01.1). This legislation set up a joint jurisdiction within the outer half of any area in which extraterritorial zoning or subdivision controls are in use. It also allowed for a negotiated boundary between the city and the other jurisdiction who otherwise would have approval authority. To my knowledge this statute has been working well and I do not see the provisions of this bill improving the existing situation.

The other issue the city has with this bill is the seating of an additional member on the city governing body. That additional member is unelected and has no vote. I do not see what purpose this provision will fulfill.

Mr. Chairman and Committee Members I would ask for a "Do Not Pass" recommendation on House Bill 1398.

CHAPTER 40-47 CITY ZONING

40-47-01. Cities may zone - Application of regulations.

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the state department of health as provided in section 23-20.3-03.1.

40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.

1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
 - (1) One mile [1.61 kilometers] if the city has a population of fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
 - (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
 - (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
- b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
- c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the

- other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
 4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the

dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
 - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
 - b. The proximity of the land in dispute to the corporate limits of each city involved;
 - c. The proximity of the land in dispute to developed property in the cities involved;
 - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
 - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
 - f. The growth pattern of the cities involved in the dispute; and
 - g. Any other factor determined to be relevant by the administrative law judge.
8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
10. For the purposes of this section, a section or a quarter quarter section is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

40-47-01.2. Agreements to not oppose annexation void.

The zoning commission or governing body may not require as a condition of approval of a request to amend or modify a zoning regulation the execution of an agreement by the owner of the property requesting the amendment or modification stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile [.40 kilometer] of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.