

2015 HOUSE POLITICAL SUBDIVISIONS

HCR 3029

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HCR 3029
2/19/2015
24144

- Subcommittee
 Conference Committee

Armonda Muscha

Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study methods through which residents of areas within the extraterritorial zoning jurisdiction of cities may be represented on city governing bodies.

Minutes:

Testimony 1

Chairman Klemin: Opened hearing on HCR 3029

Representative Kelsh: I have no dog in this fight. I am bringing this forward at the request of a friend who lives in one of the areas. He feels that the zoning authority goes out into the extraterritorial zoning areas; they are subject to regulations of the city, while having no representation on the city governing body. They do have a chance to be on zoning commissions but when it comes down to the decision making of extraterritorial zoning they have no authority. They can go to the meetings but don't have any input. This is just a study. There was another bill on this turned into a study and this one would go along with it also. Six years ago this was a hot topic and we did a lot of good. This is just a request that they have some say on the rules and regulations of building permits.

Representative Koppelman: I struggle with this issue. I understand the purpose. As cities grow they gain control over nearby areas. These areas are not part of the city but they are governed by it. Do you know in terms of the representation they have on the zoning boards, is that satisfactory to control the area where they are being governed because they can't tax an extraterritorial zoning area?

Representative Kelsh: I can't answer that. I know they are offered a seat on the planning committee. I think it is a voting position. This is in the rules and regulations and the zoning authority that they have. They have no say in how they are being handled. I don't think taxed, but handled.

Opposition:

Bill Wocken: Testimony 1

Representative Koppelman: As I look at this resolution it appears to swing the pendulum the other way. I understand the consternation of some folks in the ET zoning area because they feel under represented and controlled by an entity that they can't elect and it doesn't represent them. On the other side though, if we allow someone in an extraterritorial zoning area to become part of a city commission you are electing someone outside of the boundary to govern the city. Is that how you see this?

Bill Wocken: Yes, I am not sure if there is any middle ground. I thought we got there with a joint jurisdiction. That was the closest we were going to get saying what if there is a dispute and it can't be resolved by mediation or negation then it would go to the county commission to make the final decision.

Representative Koppelman: There is another study that deals with territorial zoning. If that study does occur it will happen and do you think that any of these things on the table that we don't need to study another part of it?

Bill Wocken: We did express an opinion on that.

Representative Kelsh: When we had the many subcommittees you probably were here. Did you ever wish you could have an input?

Bill Wocken: That is not my role but I would just hope to give my advice because I do have experience on the subject. The question was asked regarding membership on the planning commission and I believe that is 3 members, 2 members, or 1 member of the ET area that sits with a vote. The 3, 2, or 1 is based on the size of the ET are.

Representative Oversen: If a city decides to extend their boundaries for an ET zoning purpose the people living in that zone is not so much that they want to have a seat on city council, but that they get to vote for the people who are on city council making the decisions. So they don't even have a vote then. They are not included in the pricings or the warrants of that city to vote for the people who are then making decisions on their behalf. That seems very contrary to what we expect of elected officials. If they are making decisions for someone they should be able to take part in the election process. Currently that is not the way it happens, correct?

Bill Wocken: At present time the city commission decides whether or not to move into the ET area and at that point the city makes the decisions in concert the century code so we go through the agreement, negation, mediation, and eventually the final decision made by the county commission if the city commission can't come to conclusion. The folks in the ET area do vote for the county commissioners.

Representative Hatlestad: It seems the initial idea had to deal with streets and roads entering and leaving the city to make sure they remain open.

Bill Wocken: Yes. Things have changed since the first issues came up. Now when we look to zoning change request we put the streets, roads, drainage, and all those things into perspective because we know we have to deal with those things.

Representative Kelsh: When they wanted to lower the zoning ranges someone came in whom though he owned a quarter of land and it was when a ruling was made that you

needed 80 acres to have a house on it. Someone built a house in one corner and someone else in another (brothers). They determined it was only 79 acres and they wouldn't allow him to do it. I think that was a reason as to why it got nasty. I hope you have all had a change of mind on how they regulate but this is just a study. I wouldn't say there is anything wrong with someone sitting at the table to have a say and not necessarily a vote of how they will be treated in the future.

Chairman Klemin: Closed the hearing on HCR 3029.

Chairman Klemin: Opened discussion on HCR 3029. I don't agree with the premise of the resolution that it is grossly unfair and that there is no method in which they can be involved in the decision making process because we do have that in the statute I believe. I don't see how residents who don't live in the city could be placed on a city governing body as this resolution looks to.

Representative Koppelman: I think we should always be looking to hear concerns but we do have that other study resolution that we passed. I think any of these issues could be brought up if that study goes forward. This one is relatively narrow and if it was studied I would like to see broader discussion again. One of my concerns is contiguous cities and that has caused many issues. With that in mind I move a do not pass.

Representative Hatlestad: Second

A Roll Call Vote Was Taken: Yes 8, No 5, Absent 1 (Strinden)

Representative Klein will carry the bill

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 3029**

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 Koppelman Seconded By Hatlestad

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		/
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar		X			
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 8 No 5

Absent 1 (Strinden)

Floor Assignment Klein

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

Motion Carried

REPORT OF STANDING COMMITTEE

HCR 3029: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HCR 3029 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HCR 3029

HCR 3029

2/19/2015

1.1

House Concurrent Resolution No. 3029
House Political Subdivisions Committee
February 19, 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 Concurrent Resolution 3029 with the knowledge and approval of the Bismarck City Commission.

House Concurrent Resolution 3029 seeks to study the addition of extraterritorial membership on a city governing body that elects to exercise an extraterritorial zoning jurisdiction.

The City of Bismarck is opposed to this resolution not because we are not willing to look into zoning issues. We have been very involved in the study of the state zoning statutes since 1976. We are opposed to this measure because we believe this study is unnecessary in view of the extensive re-write of the portions of the zoning and subdivision regulations dealing with extraterritorial representation accomplished by the Legislature just a few sessions ago. I have enclosed an annotated copy of that 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 (county or township) who otherwise would have approval authority. To my knowledge this statute has been working well and I do not see the need for another study at this time.

Mr. Chairman and Committee Members I would ask for a "Do Not Pass" recommendation on House Concurrent Resolution 3029.

Bill Wocken

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.

other = COUNTY OR TOWNSHIP

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

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- 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

(4) COURTS

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.