

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1307

Introduced by

Representatives Kasper, Headland, Kempenich, Koppelman, Louser, D. Ruby, Steiner,
Motschenbacher

Senators Hogue, Myrdal, Paulson

1 A BILL for an Act to amend and reenact sections 11-09.1-04, 11-09.1-05, 40-05.1-05, and
2 40-05.1-06 of the North Dakota Century Code, relating to supersession of state election laws in
3 home rule counties and cities.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 11-09.1-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **11-09.1-04. Ratification by majority vote - Supersession of existing charter and**
8 **conflicting state laws - Exception - Filing of copies of new charter.**

9 If a majority of the qualified electors voting on the charter at the election vote in favor of the
10 home rule charter, it is ratified and becomes the organic law of the county on the first day of
11 January or July next following the election, and extends to all its county matters, unless limited
12 by law. The charter and the ordinances made pursuant to the charter in county matters, except
13 for matters pertaining to county elections, must be liberally construed to supersede within the
14 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
15 it applies to cities or any power of a city to govern its own affairs, without the consent of the
16 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
17 elections under a home rule charter in conflict with state law is void. The charter may not
18 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
19 township or to change the structure of township government in any organized civil township,
20 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
21 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as

ratified and approved must be filed with the secretary of state; one with the recorder for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 2. 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. 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. Levy and collect an infrastructure fee. The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by the county. The money collected under this subsection may not be

used for any purpose other than infrastructure maintenance costs. If a home rule county levies an infrastructure fee, the home rule county also may levy and collect green field special assessments. As used in this subsection:

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.

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.

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.

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

~~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. This subsection does not confer any authority to regulate any

1 industry or activity regulated by state law or by rules adopted by a state agency. This
2 subsection is subject to the provisions of section 62.1-01-03.

3 ~~9-8.~~ Lay out or vacate public grounds, and provide through its governing body for the
4 construction, use, operation, designation, and regulation of a county road system.

5 ~~40-9.~~ Provide for zoning, planning, and subdivision of public or private property within the
6 county limits but outside the zoning authority of any city or organized township. This
7 subsection is subject to the provisions of section 62.1-01-03.

8 ~~44-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

9 ~~42-11.~~ Contract with and receive grants from any other governmental entity or agency, with
10 respect to any local, state, or federal program, project, or works.

11 The people of all counties coming within this chapter have the full right of self-government
12 in all matters within the powers enumerated in this chapter. The statutes of this state, so far as
13 applicable, continue to apply to counties, except as superseded by the charters of the counties
14 or by ordinances passed pursuant to the charters.

15 **SECTION 3. AMENDMENT.** Section 40-05.1-05 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **40-05.1-05. Ratification by majority vote - Supersession of existing charter and state**
18 **laws in conflict therewith - Exception - Filing of copies of new charter.**

19 If a majority of the qualified voters voting on the charter at the election vote in favor of the
20 home rule charter, the charter is ratified and is the organic law of the city, and extends to all its
21 local and city matters, unless limited by law. The charter and the ordinances made pursuant to
22 the charter in such matters, except for matters pertaining to city elections, supersede within the
23 territorial limits and other jurisdiction of the city any law of the state in conflict with the charter
24 and ordinances and must be liberally construed for such purposes. Any ordinance enacted or
25 adopted by a city pertaining to city elections under a home rule charter in conflict with state law
26 is void. One copy of the charter ratified and approved must be filed with the secretary of state
27 and one with the auditor of the city to remain as a part of its permanent records. ~~Thereupon-~~
28 ~~the~~The courts shall take judicial notice of the new charter upon its filing.

29 **SECTION 4. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **40-05.1-06. Powers.**

2 From and after the filing with the secretary of state of a charter framed and approved in
3 reasonable conformity with the provisions of this chapter, such city, and the citizens thereof,
4 shall, if included in the charter and implemented through ordinances, have the following powers
5 set out in this chapter:

- 6 1. To acquire, hold, operate, and dispose of property within or without the corporate
7 limits, and, subject to chapter 32-15, exercise the right of eminent domain for such
8 purposes.
- 9 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
10 make payment of its debts and expenses; to contract debts, borrow money, issue
11 bonds, warrants, and other evidences of indebtedness; to establish charges for any
12 city or other services; and to establish debt limitations.
- 13 3. To levy and collect property taxes and special assessments for benefits conferred, for
14 its public and proprietary functions, activities, operations, undertakings, and
15 improvements, and establish mill levy limitations. Notwithstanding any authority
16 granted under this chapter, all property must be assessed in a uniform manner as
17 prescribed by the state board of equalization and the state supervisor of assessments
18 and all taxable property must be taxed by the city at the same rate unless otherwise
19 provided by law.
- 20 4. To levy and collect an infrastructure fee. The fee must replace a general special
21 assessment on all property for payment of infrastructure maintenance costs through a
22 utility bill issued by a municipality. The money collected under this subsection may not
23 be used for any purpose other than infrastructure maintenance costs. If a home rule
24 city levies an infrastructure fee, the home rule city also may levy and collect green field
25 special assessments. As used in this subsection:
 - 26 a. "General special assessments" means special assessments levied for the
27 purpose of maintaining existing roads and infrastructure and special
28 assessments levied for the construction or repair of arterial roads and
29 infrastructure that provide a benefit to the entire community.

1 b. "Green field special assessments" means special assessments levied for
2 infrastructure costs associated with the development of agricultural or
3 undeveloped property.

4 5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use
5 taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a
6 city lodging tax, and a city restaurant tax. For purposes of this section, any taxes
7 imposed under this section on farm machinery, farm irrigation equipment, and farm
8 machinery repair parts used exclusively for agricultural purposes, or on alcoholic
9 beverages, which were in effect on December 31, 2005, become gross receipts taxes
10 after December 31, 2005. After December 31, 2005, any portion of a charter or any
11 portion of an ordinance passed pursuant to a charter which does not conform to the
12 requirements of this section is invalid to the extent it does not conform. The invalidity
13 of a portion of a charter or ordinance because it does not conform with this subsection
14 does not affect the validity of any other portion of the charter or ordinance of the
15 eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1,
16 2017, may not allow for the collection and levy of any tax not otherwise specified
17 under this section. Sales and use taxes and gross receipts taxes levied under this
18 section:

19 a. Must conform in all respects with regard to the taxable or exempt status of items
20 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
21 at multiple rates with the exception of sales of manufactured homes or mobile
22 homes.

23 b. May not be newly imposed or changed except to be effective on the first day of a
24 calendar quarterly period after a minimum of ninety days' notice to the tax
25 commissioner or, for purchases from printed catalogs, on the first day of a
26 calendar quarter after a minimum of one hundred twenty days' notice to the
27 seller.

28 c. May not be limited to apply to less than the full value of the transaction or item as
29 determined for state sales and use tax purposes, except for farm machinery
30 gross receipts tax.

- 1 d. Must be subject to collection by the tax commissioner under an agreement under
2 section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and
3 must be administered by the tax commissioner in accordance with the relevant
4 provisions of chapter 57-39.2, including reporting and paying requirements,
5 correction of errors, payment of refunds, and application of penalty and interest.
- 6 6. To fix the fees, number, terms, conditions, duration, and manner of issuing and
7 revoking licenses in the exercise of its governmental police powers.
- 8 7. To provide for city officers, agencies, and employees, their selection, terms, powers,
9 duties, qualifications, and compensation. To provide for change, selection, or creation
10 of its form and structure of government, including its governing body, executive officer,
11 and city officers.
- 12 8. To provide for city courts, their jurisdiction and powers over ordinance violations,
13 duties, administration, and the selection, qualifications, and compensation of their
14 officers; however, the right of appeal from judgment of such courts shall not be in any
15 way affected.
- 16 9. ~~To provide for all matters pertaining to city elections, except as to qualifications of~~
17 ~~electors.~~
- 18 ~~10.~~ To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
19 regulations to carry out its governmental and proprietary powers and to provide for
20 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 21 ~~11.~~ 10. To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
22 operation, and regulation thereof.
- 23 ~~12.~~ 11. To define offenses against private persons and property and the public health, safety,
24 morals, and welfare, and provide penalties for violations thereof. This subsection is
25 subject to the provisions of section 62.1-01-03.
- 26 ~~13.~~ 12. To engage in any utility, business, or enterprise permitted by the constitution or not
27 prohibited by statute or to grant and regulate franchises therefor to a private person,
28 firm, corporation, or limited liability company.
- 29 ~~14.~~ 13. To provide for zoning, planning, and subdivision of public or private property within the
30 city limits. To provide for such zoning, planning, and subdivision of public or private

1 property outside the city limits as may be permitted by state law. This subsection is
2 subject to the provisions of section 62.1-01-03.

3 ~~15.14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.

4 ~~16.15.~~ To fix the boundary limits of said city and the annexation and deannexation of territory
5 adjacent to said city except that such power shall be subject to, and shall conform with
6 the state law made and provided.

7 ~~17.16.~~ To contract with and receive grants from any other governmental entity or agency, with
8 respect to any local, state, or federal program, project, or works.

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