



February 6, 2025

House Political Subdivisions

HB 1307

Rep. Donald W. Longmuir, Chair

For the record, I am Stephanie Dassinger Engebretson. I am the deputy director and attorney for the North Dakota League of Cities (NDLC). The NDLC opposes HB 1307 because it would eliminate the majority of the local control aspects of home rule authority that city electors in 158 cities granted to their city through adopting a home rule charter.

In 1969, the North Dakota Legislature adopted the first version of home rule for cities. Home rule creates a process for a city governing body or for city electors to form a committee to draft a home rule charter. That committee can include all or some of the seventeen powers in NDCC § 40-05.1-06 to entrust to the governing body of a city. Once a charter is drafted, it is voted on by the city electors. Every one of the 158 cities that have a home rule charter have had an election where the voters of the city decided on whether to adopt the city's home rule charter. City residents can also petition the governing board to propose amendments to the home rule charter and trigger an election.

A lot of people equate home rule charters to sales tax, and in some cities the electors have adopted a home rule charter that only provides for sales tax. However, sales tax is only part of the purpose of adopting a home rule charter. NDCC § 40-05.1-05 currently provides, "[t]he charter and the ordinances made pursuant to the charter in such matters supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances must be liberally construed." This language has long been interpreted to mean that home rule cities can use a home rule power in their home rule charter to do something that is different from state law when a local issue is involved.

HB 1307 significantly changes home rule power and would change NDCC 40-05.1-05 to provide "[a]ny ordinance enacted or adopted by a city under a home rule charter in conflict with state law is void." In other words, the ability to use home rule authority to address local issues moving forward is impaired if the legislature has acted. Additionally, any ordinances that a city has adopted that differ from a state statute are invalidated.

When reviewing this bill, I found two examples of common ordinances that cities have adopted using home rule authority that I believe will be invalidated if HB 1307 is adopted.

Many cities have used home rule authority to adopt liquor license ordinances that contain limits to the number of licenses that are allowed in the city, the types of liquor licenses that are allowed in the city, and set a price for liquor licenses in the city. NDCC § 5-02-03 provides for local liquor licenses. It provides that there may be on sale and off sale liquor licenses. It sets a fee for the liquor licenses, which is different from what a lot of cities charge, and it does not have any language regarding limiting the number of liquor licenses in a city. Under HB 1307, any city that has a liquor license ordinance that is different from NDCC § 5-02-03 would be void.

Additionally, many cities have used their home rule charter authority to adopted an ordinance for the sale of real property in the city when they have a number of lots for sale so that they can set a fair market price for the parcel and sell it to an individual who pays the price, instead of having a public sale to sell every lot that has a price over \$2,500 as provided in NDCC § 40-11-04. If HB 1307 is adopted, these ordinances would be void.

Please note that home rule authority is not without limits and the Legislature has set many restrictions on the use of home rule over the years by including language in bills specifically prohibiting the use of home rule authority to supersede the provisions. Here's some examples of exclusions adopted by the legislature:

- Cannot supersede on pesticides. NDCC § 4.1-33-04;
- Cannot supersede on a criminal offenses. NDCC § 12.1-01-05.
- Cannot supersede on political signs. NDCC § 16.1-10-16.
- Cannot supersede on cigarette manufacturer inspection. NDCC § 18-13-10.
- Cannot supersede on regulation on retail sale of ephedrine, pseudoephedrine, or phenylpropanolamine. NDCC § 19-03.4-08(12).
- Cannot supersede on regulation of bed and breakfast inspections. NDCC § 23-09.1-02.
- Cannot be less stringent related to smoking in public places. NDCC § 23-12-10.2.
- Cannot supersede on tax exemptions for new and expanding businesses. NDCC § 40-57.1-03.
- Cannot supersede provisions related to shooting ranges. NDCC § 42-01-01.1.
- Cannot supersede open record and open meeting provisions. NDCC § 44-04-17.1(11).
- Cannot supersede mobile telephone taxes. NDCC § 57-34.1-03.
- Cannot be more stringent on firearm laws for purchase, sale, ownership, possession. NDCC § 62.1-01-03.

Additionally, this Legislative Session there have been 14 bills introduced that include language excluding using home rule authority on the subject:

- HB 1168 (capping property taxes);
- HB 1176 (capping property taxes);
- HB 1208 (developing near military installations);
- HB 1273 (limiting free speech);

- HB 1353 (capping property taxes);
- HB 1375 (alcohol compliance checks);
- HB 1534 (limitations on taxable value);
- HB 1559 (limitations on taxable value of residential property);
- SB 2026 (development agreement with foreign adversary);
- SB 2279 (capping property taxes);
- SB 2314 (development agreement with foreign adversary);
- SB 2337 (development agreement with country of concern);
- SB 2361 (development agreement with foreign adversary); and
- SB 2378 (capping property taxes).

In other words, the North Dakota Legislature appears to understand how to exclude home rule authority from being used to do something different from the law it has enacted.

Further, in the fall of 2024, the North Dakota Supreme Court held that the North Dakota Legislature has the authority to preempt home rule city authority, regardless of whether the city has exercised the authority or not. The ruling cemented that the authority to define home rule authority lies with the North Dakota Legislature.

In adopting the provisions related to home rule authority, the 1969 Legislature adopted the following language, which remains in the Century Code today:

It is the intention of this Act to grant and confirm to the people of all cities coming within its provisions the full right of self- government in both local and city matters within the powers enumerated herein.

Adopting HB 1307 would severely limit home rule authority and the powers that electors of cities have entrusted to their city government. The NDLC respectfully requests a Do Not Pass on HB 1307.

