

2025 HOUSE POLITICAL SUBDIVISIONS

HB 1307

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1307
2/6/2025

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

10:07 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Davis, Hatlestad, Heilman, Klemin, Motschenbacher, Toman, Warrey

Members Absent: Representatives Bolinske, Hager, Ostlie

Discussion Topics:

- Similar bills from previous sessions
- North Dakota state election law
- Approval voting

10:07 a.m. Representative Jim Kaper, North Dakota Representative for District 46, introduced the bill and provided testimony #35895, #35902

10:13 a.m. Stephanie Engebretson, North Dakota League of Cities, testified in opposition and provided testimony #35896.

10:17 a.m. Heather Austin, Executive Director of Tobacco Free North Dakota, submitted testimony in opposition #35737.

10:18 a.m. Renae Moch, Public Health Director for Bismarck-Burleigh Public Health, testified in opposition #35731.

10:19 a.m. Harold Stewart, City Manager for the City of Minot testified in opposition and provided testimony #35724.

10:21 a.m. Craig Miller, Emmons County Commissioner, testified in opposition.

Additional written testimony:

Doug Sharbono, Fargo Citizen, submitted testimony in favor #35238

David Steele, Jamestown City Council Member, submitted testimony in opposition #33989

Chelsea Ridge, North Dakota Public Health Association, submitted testimony in opposition #34712

Randall Dietz, City of Beach, submitted testimony in opposition #35291

Javayne Oyloe, Executive Officer of Upper Missouri District Health Unit, submitted testimony in opposition #35489

Julie Hess, Jud, North Dakota, submitted testimony in opposition #35653

Nancy Neary, Director of Tobacco Prevention at Central Valley Health District, submitted testimony in opposition #35805

Katie Beyer, Executive Officer of City-County Health District, submitted testimony in opposition #35806

Megan Schneider, President of the Bismarck Tobacco-Free Coalition, submitted testimony in opposition #35542

Doug Pearson, Independent, submitted testimony in opposition #35884

10:24 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

Honorable House Political Subdivision Committee Members:

I would ask that you give HB 1307 a DO NOT PASS recommendation. This bill would gut the very idea of home rule that many cities and counties have adopted. The Republican party has always stood for local control and this bill destroys that concept completely. The legislature has already passed bills that severely restrict local municipalities and counties to function in order to meet the needs of its citizens. Do not add another burden to our local governing boards.

Respectfully,

David Steele



Opposition Testimony of HB 1307

Chelsea Ridge
North Dakota Public Health Association
Alcohol, Tobacco and Other Drugs Section, Chair
Williston, ND

Chairman Longmuir, and Representatives of the House Political Subdivisions Committee,

My name is Chelsea Ridge, and I am the chairwoman of the North Dakota Public Health Association (NDPHA) Alcohol, Tobacco, and Other Drugs Section. Our vision is a North Dakota where every person can live their healthiest life. I am here to provide Opposition testimony to House Bill 1307, to protect local control.

North Dakota's public health system consists of 28 decentralized local public health units working in partnership with the North Dakota Department of Health and Human Services. We collaborate closely with local governments across our state to enhance and safeguard the health and safety of our citizens. In a combined effort to implement effective solutions for our local communities across the state.

HB 1307 is highly concerning to us as it threatens local control. Many local ordinances in place across our state, stronger than state law, play a critical role in protecting our communities from the harms of alcohol, tobacco and other drugs. These local ordinances are vital for maintaining the safety and well-being of our residents.

One example is the Responsible Beverage Server Training (RSBT) program, is a collaborative effort between local public health units, law enforcement agencies, alcohol establishments, the North Dakota Safety Council, and several municipalities that require RBST because it's designed to educate employees who serve and sell alcoholic beverages the signs of over-service or intoxication, relatable laws, ID Checking guidance, and youth alcohol prevention. Responsible Beverage Server Training, when implemented correctly, with sustainability, in partnership with owners and managers, and implemented in coordination with other interventions can substantially reduce a number of harms due to risky alcohol consumption.¹

Our last area of concern is the numerous cities that have safeguarded their citizens from the harms of exposure to secondhand smoke. For example, protecting our children at local parks and playgrounds that already display signs that tobacco use is prohibited in this space. North Dakota's smoke free law doesn't address outdoor spaces.

Local public health measures need the flexibility to tailor interventions to meet the needs of our local communities. For all these reasons, we urge you to vote no on HB 1307.

Thank you for your time and consideration

Sincerely,
Chelsea Ridge

1. Fell JC, Scolese J, Achoki T. *The Effectiveness of Responsible Beverage Server Training Programs: A Literature Review and Synthesis*. *Journal of Alcoholism Drug Abuse & Substance Dependence*. NORC at the University of Chicago, 4350 East-West Highway, 8th Floor, Bethesda, Maryland 20814, United States. Apr 18, 2024. Accessed on September 25, 2024, at: heraldopenaccess.us/openaccess/the-effectiveness-of-responsible-beverage-service-training-programs-a-literature-review-and-synthesis

**Do Pass Testimony
of Doug Sharbono, Citizen of North Dakota
on HB1307
in the Sixty-ninth Legislative Assembly of North Dakota**

Dear Chairman Longmuir and members of the House Political Subdivisions Committee,

I am writing as a citizen and believe HB1307 is excellent legislation. This legislation prohibits a political subdivision from superceding state law based on its home rule charter. I ask for a Do Pass recommendation on this bill.

I am aware of two circumstances this law would help correct. The City of Fargo passed an ordinance banning the sale of firearms in residences. They claimed this right under the home rule charter even though the North Dakota and US Constitutions both expressly acknowledge this freedom. The courts found the local ordinance unconstitutional.

The second issue is approval voting. There are aspects of the ballot used in primary elections in the City of Fargo that break both state law and their own city ordinance. HB1307 would assist the superior law to be followed limiting never-ending lawsuits trying to determine if state law or local law has jurisdiction. Due to past abuses, further clarity is required, and HB1307 provides that.

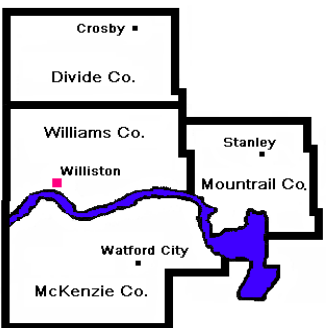
Please give HB1307 a Do Pass Recommendation.

Thank you,

Doug Sharbono
1708 9th St S
Fargo, ND 58103

Please vote NO on HB 1307. Allowing us small towns to govern ourselves.

www.umdhu.org



Upper Missouri District Health Unit

“Your Public Health Professionals”

<p><u>DIVIDE COUNTY</u> Divide County Courthouse P.O. Box 69 200 Main Street N Crosby, ND 58730 Phone 701-965-6813 Fax 701-965-6814</p>	<p><u>MCKENZIE COUNTY</u> P.O. Box 1066 201 5th St. NW Suite 1100 Watford City, ND 58854 Phone 701-444-3449 Fax 701-842-6985</p>	<p><u>MOUNTRAIL COUNTY</u> Memorial Building P.O. Box 925 18 2nd Ave SE Stanley, ND 58784 Phone 701-628-2951 Fax 701-628-1294</p>	<p><u>WILLIAMS COUNTY</u> 110 W. Bdwy, Ste 101 Williston, ND 58801-6056 Phone 701-774-6400 Fax 701-577- 8536 Toll Free 1-877-572-3763</p>
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Testimony
House Bill 1307
House Political Subdivisions
February 6, 2025

Good morning, Chairman Longmuir and members of the committee. I am Javayne Oyloe, Executive Officer of Upper Missouri District Health Unit (UMDHU). I have worked in public health for nearly 29 years. UMDHU provides local public health services to Divide, McKenzie, Mountrail and Williams Counties.

Local public health works with residents, city commissioners and others to establish ordinances that benefit the health of our community. Ordinances may include measures, programs and training that facilitate understanding and provide tools to assist with public safety.

Programs like the responsible beverage server training has been adopted by many municipalities in the state. This is a great example of local business owners' requests to help educate servers who want to avoid over serving alcohol or serving to minors. Another example are the rules used to assure pools are safe for our friends and family. The summer and recreational trips to a hotel or community pool are far more fun because we know there are safety measures in place.

When these types of ordinances are written they are created with community input. This local input is essential in knowing what best serves the community. For these reasons, I request a do not pass on HB 1307.

TESTIMONY IN OPPOSITION TO HB 1307

Megan L. Schneider, EdD, RRT, TTS
Bismarck, ND
701-220-5414
mleighsrrt@gmail.com

Chairman Rep. Longmuier, distinguished members of the House Political Subdivisions Committee,

My name is Megan Schneider, and I currently serve as the President of the Bismarck Tobacco-Free Coalition. Additionally, I am a respiratory therapist, educator, and Tobacco Treatment Specialist, with nearly a decade of experience in the field of respiratory care. I am writing to provide testimony in opposition to HB 1307.

HB 1307, if enacted, would effectively undermine the authority of local governments with home rule charters to adopt tobacco control ordinances that are more stringent than state law. It is critical to note that state regulations must include enabling clauses to ensure that such regulations do not preempt local ordinances. These clauses are designed to empower local jurisdictions to enact laws that may differ from, and at times exceed, the minimum standards set by the state, thereby allowing local governments the flexibility to respond to the unique needs of their communities.

The North Dakota Smoke-Free Law, which serves as a baseline for tobacco regulation, is itself a minimum standard. This is evident in the cigar lounge exemption inserted into the law by the North Dakota Legislature in 2023. By contrast, the City of Bismarck's smoke-free ordinance, which predates the state law, goes further by prohibiting cigar lounges and extending stronger protections against secondhand smoke exposure. This ordinance, adopted in 2011, reflects the values and preferences of the majority of Bismarck residents and was put in place to ensure the health and safety of the public.

It is not uncommon for local governments to enact ordinances in advance of state legislation, particularly when such actions align with the values and health priorities of local constituents. HB 1307 would unduly restrict the ability of local governments to implement measures that best

serve the health interests of their communities, which could have significant public health consequences.

In conclusion, I respectfully urge the committee to reject HB 1307. Allowing local governments the flexibility to enact tobacco control policies that reflect the specific needs of their residents is paramount to safeguarding public health. HB 1307 would unnecessarily limit this ability, and for these reasons, I respectfully ask for a vote of no on HB 1307.

Thank you for your time and consideration.

House Bill 1307 would take away the voice in decision making of each county and only give it to the state. Let's not forget that each county helps make up the state of ND and each county should have a voice! I would encourage a no vote on this bill. We need transparency and accountability in decision making and each county should be involved.



February 6, 2025

Sixty-ninth Legislative Assembly of North Dakota
Bismarck, ND

RE: City of Minot Opposition for House Bill 1307

Dear Members of the Committee,

The City of Minot would like to express its opposition for House Bill 1307 introduced by Senators Hogue, Myrdal, Paulson and Representatives Kasper, Headland, Kempenich, Koppelman, Louser, Motschenbacher, Ruby and Steiner.

We believe should HB 1307 pass it will have impacts on the City of Minot and its' citizens the sponsors of this bill do not intend. The City of Minot strives to abide by the State laws of North Dakota enacted by the legislature as our primary course of action. However, there have been a few examples where Minot has used its home rule authority to supersede State law as has been allowed under the current laws regulating home rule cities in North Dakota. The examples we are aware of at this time are as follows:

1. NDCC 40-08-04 requires Council members to be elected by wards. Minot citizens chose not to use a ward system by ballot measure.
2. NDCC 40-08-18 restricts the Mayor to only vote in the case of a tie. Currently the Mayor votes on all actions taken by the City Council.
3. NDCC 40-08-24 gives the Mayor veto power. Current Minot City ordinances do give the Mayor veto authority.
4. NDCC 40-08-27 allows the Mayor to appoint police officers and the chief of police. Currently in Minot officers are hired similar to other City employees and appointed by the Chief of Police, and the Chief of Police is appointed by the City Manager and ratified by the Mayor and City Council.

HB 1307 states that "any ordinance enacted or adopted by a city under home rule charter in conflict with state law is void." This would void actions the citizens voted on and enacted as to how they wanted to elect their Mayor and Council, and the authorities given to them.

The City of Minot is also concerned the passage of this bill would nullify many of the benefits of being a home rule city. The citizens of Minot voted on becoming a home rule city so they could provide their community with local control and say into how they wanted their City government. This bill takes that control and say away from the citizens of Minot.

Given the unintended impacts and potential loss of local control of Minot citizens over how they elect their Council and the authorities of the Mayor the City of Minot respectfully requests a **Do Not Pass** vote on HB 1307,

Sincerely,

Harold Stewart, Minot City Manager



February 6, 2025
House Political Subdivisions Committee
HB 1307
Representative Donald W. Longmuir, Chair

Key Points in Opposition to HB 1307

- **Local decision-making is critical to community health.** Every community has unique health challenges, and local leaders are best positioned to develop tailored solutions that reflect their residents' needs.
- **HB 1307 removes flexibility and limits local protections.** This bill would prevent cities and counties from enacting policies that go beyond state law, restricting their ability to respond effectively to local health and safety concerns.

Testimony in Opposition to 1307

Chairman Longmuir and Members of the House Political Subdivision Committee:

My name is Renae Moch and I serve as the Public Health Director for Bismarck-Burleigh Public Health in the City of Bismarck. I am here to oppose House Bill 1307, which would limit the ability of cities and counties to enact stronger public health protections tailored to their community needs.

Every community has unique public health needs, and local leaders are in the best position to make informed decisions that reflect those needs. Across North Dakota, cities have used their home rule authority to adopt policies that promote health and safety in ways that complement state law. House Bill 1307 would reduce our ability to address health and safety concerns that directly impact the people who live, work, and visit our city.

Bismarck, like many communities, has adopted local policies that strengthen public health protections, including ordinances on health and sanitation and smoke-free public spaces. Maintaining local decision-making authority ensures that communities can continue addressing health challenges in ways that best serve their residents.

Why Local Decision-Making Matters

- Local leaders understand the specific challenges their communities face.
- Home rule authority allows communities to act in the best interests of their residents.
- Tailored policies help cities and counties effectively address local public health concerns.

I respectfully urge the committee to oppose House Bill 1307. Thank you for your time and consideration.

Renae Moch, MBA, FACMPE
 Public Health Director
 Bismarck-Burleigh Public Health | City of Bismarck
rmoch@bismarcknd.gov
 (701) 355-1540



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February 6, 2025

10:00 am CST

House Political Subdivisions Committee for the 69th ND Legislative Assembly

Chairman Longmuir and members of the House Political Subdivisions Committee, hello, my name is Heather Austin, and I am the Executive Director for Tobacco Free North Dakota. The mission of Tobacco Free North Dakota is to improve and protect the public health of all North Dakotans by reducing the serious health and economic consequences of tobacco use, the state's number one cause of preventable disease and death. Thank you so much for your time this morning.

Today I am here to encourage a Do Not Pass on HB 1307, the bill relating to supersession of state laws in home rule counties and cities. Taking away a community's option to customize local policy for its citizens may have unintended consequences when it is time to address new and challenging needs, in general, but also when it comes to tobacco control policy, and we hope that you will consider leaving local control in place.

Our concern relates to tobacco control policy because many North Dakota communities have already strengthened protections for their constituents, and accounted for unique local needs, by making their local ordinances stronger than state law. Cities and counties need the ability to have the flexibility to enact ordinances based on the will of their people. Currently 15 cities have a smoke free law ordinance in place, in addition to the protection they receive from our state indoor smoke free air law. They include Fargo, Bismarck, Grand Forks, Minot, Williston, Wahpeton, Harvey, Larimore, Napoleon, Crosby, Hankinson, Walhalla, Pembina, St. John, and Rutland. Seventeen communities have a youth access ordinance in place to deter youth initiation to nicotine dependence, and to allow for monitoring and enforcing our state's age restriction laws. They include Fargo, Bismarck, Grand Forks, Minot, West Fargo, Williston, Dickinson, Jamestown, Wahpeton, Devils Lake, Valley City, Lincoln, Wells County, Langdon, Cando, Linton, and St. John.

These ordinances protect thousands of North Dakotans. By voiding just these two examples, this bill would instantly put the health of more than 460,000 North Dakotans, which is more than 60% of the state population, in danger. We also worry about HB 1307 preventing any future ordinances from being enacted if they conflict with state law-either directly or due to no existing law at the state level. This is important because commercial tobacco products are changing quickly, and often the best, and quickest, response is a local one.

Again, thank you for this time in front of you, Chairman Longmuir, and the Committee. It is very appreciated. Please vote Do Not Pass on HB 1307.

May I take any questions?

Heather Austin
Executive Director, Tobacco Free North Dakota
Cell: 701-527-2811
heather@tfnd.org
www.tfnd.org

Good Morning Chairman Longmuir and members of the Political Subdivisions Committee:

HB 1307 will end local control, removing the right of local governments to adopt more restrictive laws at the local level than what is in place at the state level. Retaining these rights gives local governments the ability to make laws that they feel meet the needs of, and that are appropriate for their citizens.

As tobacco prevention advocates, we provide education on CDC Best Practices for Comprehensive Tobacco Programs, and one of the most important Best Practices is the retention of local control for cities and counties.

Preemption will remove the ability of local governments to address the needs of their communities. Ordinances are in place across the state that are stronger laws than the current state smoke-free law, as well as stronger youth access laws.

Advocating for CDC Best Practices, I am submitting testimony in opposition to HB 1307.

Thank you,

Nancy Neary
Director of Tobacco Prevention
Central Valley Health District
nneary@nd.gov

Testimony
House Bill 1307
House Political Subdivisions
February 6, 2025

Katie Beyer, CHES
Executive Officer for City-County Health District
Valley City, North Dakota (District 24)

Chairperson Longmuir, Members of the Political Subdivisions Committee,

My name is Katie Beyer and I serve as the Executive Officer for City-County Health District in Valley City. I am writing to oppose HB 1307, a bill that threatens to override local authority.

As a community we made a decision to end the sale of flavored vape products based on the concerns of resident parents. First adopted in 2016, then upheld again last summer, this decision was based on:

- Listening to business owners, who didn't want to sell these products but also didn't want to be at a disadvantage.
- Hearing from parents, like one who found a cotton candy-flavored vape in her middle schooler's backpack. She had no idea how easily kids could access these products—until it was too late.

We also have an ordinance requiring responsible beverage server training for anyone who serves alcohol as part of their regular job.

That ordinance ensures:

- Alcohol is served responsibly.
- Over-service is prevented.
- Our community stays safer.

Just like our efforts to end the sale of flavored vape products, this policy was developed by and for our community. And it works.

We did it because:

- We are here.
- We understand our communities.
- And we act when necessary.

Valley City has long made clear and intentional decisions to protect our residents.

I urge you to vote NO on HB 1307 and allow communities like mine to continue making decisions that align with our local priorities and values.

Thank you for your time and consideration.

House Political Subdivision Committee

I am not in favor of HB1307. In our constitution our founding fathers wanted we the people to govern ourselves, starting with the Townships, Counties and then State. This does the opposite. Do not pass on HB1307.

Thank you Doug Pearson

25.0079.01001
Title.

Prepared by the Legislative Council
staff for Representative Kasper
February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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-~~and~~, 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~~Ordinances in conflict with~~ state laws-~~void~~ - Exception - Filing of copies of**
9 **new charter.**

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

- 1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:
 - 7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.
 - 11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.
- 14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.
16 Sales and use taxes and gross receipts taxes levied under this chapter:
 - 17 a. Must conform in all respects with regard to the taxable or exempt status of items
18 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
19 at multiple rates with the exception of sales of manufactured homes or mobile
20 homes.
 - 21 b. May not be newly imposed or changed except to be effective on the first day of a
22 calendar quarterly period after a minimum of ninety days' notice to the tax
23 commissioner or, for purchases from printed catalogs, on the first day of a
24 calendar quarter after a minimum of one hundred twenty days' notice to the
25 seller.
 - 26 c. May not be limited to apply to less than the full value of the transaction or item as
27 determined for state sales and use tax, except for farm machinery gross receipts
28 tax purposes.
 - 29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 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

1 out its governmental and proprietary powers and to provide for public health, safety,
2 morals, and welfare. This subsection does not confer any authority to regulate any
3 industry or activity regulated by state law or by rules adopted by a state agency. This
4 subsection is subject to the provisions of section 62.1-01-03.

5 ~~9-8.~~ Lay out or vacate public grounds, and provide through its governing body for the
6 construction, use, operation, designation, and regulation of a county road system.

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

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

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

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

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

19 **40-05.1-05. Ratification by majority vote - Supersession of existing charter**
20 ~~and Ordinances in conflict with~~ state laws in conflict therewith ~~void~~ - **Exception - Filing of**
21 **copies of new charter.**

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

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

3 **40-05.1-06. Powers.**

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

- 8 1. To acquire, hold, operate, and dispose of property within or without the corporate
9 limits, and, subject to chapter 32-15, exercise the right of eminent domain for such
10 purposes.
- 11 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
12 make payment of its debts and expenses; to contract debts, borrow money, issue
13 bonds, warrants, and other evidences of indebtedness; to establish charges for any
14 city or other services; and to establish debt limitations.
- 15 3. To levy and collect property taxes and special assessments for benefits conferred, for
16 its public and proprietary functions, activities, operations, undertakings, and
17 improvements, and establish mill levy limitations. Notwithstanding any authority
18 granted under this chapter, all property must be assessed in a uniform manner as
19 prescribed by the state board of equalization and the state supervisor of assessments
20 and all taxable property must be taxed by the city at the same rate unless otherwise
21 provided by law.
- 22 4. To levy and collect an infrastructure fee. The fee must replace a general special
23 assessment on all property for payment of infrastructure maintenance costs through a
24 utility bill issued by a municipality. The money collected under this subsection may not
25 be used for any purpose other than infrastructure maintenance costs. If a home rule
26 city levies an infrastructure fee, the home rule city also may levy and collect green field
27 special assessments. As used in this subsection:
 - 28 a. "General special assessments" means special assessments levied for the
29 purpose of maintaining existing roads and infrastructure and special
30 assessments levied for the construction or repair of arterial roads and
31 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 ~~40.~~ 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 ~~41.10.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
22 operation, and regulation thereof.
- 23 ~~42.11.~~ 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 ~~43.12.~~ 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 ~~44.13.~~ 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 ~~45-14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.
4 ~~46-15.~~ 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 ~~47-16.~~ 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.



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.

Kasper, Jim M.

From: Richard, Dustin
Sent: Wednesday, February 5, 2025 2:13 PM
To: Kasper, Jim M.
Cc: jmkasper@amg-nd.com
Subject: House Bill No. 1307
Attachments: House Bill No. 1307 - Introduced Version.pdf; House Bill No. 1307 - Amendment.pdf

Good afternoon, Representative Kasper -

Thanks for the email. I've attached House Bill No. 1307 as introduced and the proposed amendment to House Bill No. 1307.

As introduced, your bill would prohibit **any** ordinance passed by a home-rule city or home-rule county that expressly conflicts with state law from superseding state law ever again.

On February 5, you instructed me to draft a targeted amendment to prohibit an ordinance pertaining to county and city elections in home-rule counties and home-rule cities from superseding state law.

Section 1 of the proposed amendment prohibits an ordinance pertaining to a county election from superseding state law. All county ordinances pertaining to county elections in violation of state law are void under this section.

Section 2 of the proposed amendment prohibits a home-rule county from regulating matters pertaining to county elections. Home-rule counties must follow state law pertaining to county elections.

Section 3 of the proposed amendment prohibits an ordinance pertaining to a city election from superseding state law. All city ordinances pertaining to city elections in violation of state law are void under this section.

Section 4 of the proposed amendment prohibits a home-rule city from regulating matters pertaining to city elections. Home-rule cities must follow state law pertaining to city elections.

I hope this information is helpful to you. If you have any questions, please do not hesitate to contact me.

Thank you!

Dustin A. Richard

Counsel
 North Dakota Legislative Council
 600 East Boulevard Ave
 Bismarck, ND 58505
drichard@ndlegis.gov
 701.328.2916

From: Kasper, Jim M. jmkasper@ndlegis.gov
Sent: Wednesday, February 5, 2025 12:38 PM
To: Richard, Dustin drichard@ndlegis.gov; Kasper, Jim M. jmkasper@ndlegis.gov
Subject: FW: (Rep. Kasper) Amendment Request - HB 1307 - LC# 25.0079.01001

Hi Dustin:

When you email me a memo discussing what the amendment does, please include the amendment as an attachment.

Thank you.

Jim

Representative Jim Kasper
North Dakota House of Representatives
District 46, Fargo
Chairman Government & Veterans Affairs Committee
Chairman Special House Committee on Ethics
Member Industry, Business & Labor Committee
Cell Phone: 701-799-9000
State Email: jkasper@ndlegis.gov
Bus. Email: jmkasper@amg-nd.com

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1307
2/20/2025

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

8:59 a.m. Chairman Longmuir called the meeting to order.

Members Present: Chairman Longmuir, Vice-Chairman Fegley, Vice-Chairman Jonas, Representatives Davis, Hager, Hatlestad, Motschenbacher, Ostlie, Toman, Warrey

Members Absent: Representatives Bolinske, Klemin, Heilman

Discussion Topics:

- Fargo local elections
- North Dakota election law

9:00 a.m. Representative Jim Kasper, North Dakota Representative for District 46, proposed Amendment LC:25.0079.01001, testimony #38177.

9:15 a.m. Representative Toman moved to adopt Amendment LC:25.0079.01001, testimony #38177.

9:15 a.m. Representative Motschenbacher seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jim Jonas	Y
Representative Macy Bolinske	A
Representative Jayme Davis	N
Representative LaurieBeth Hager	N
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	A
Representative Lawrence R. Klemin	A
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

9:16 a.m. Motion passed 8-2-3

9:17 a.m. Representative Motschenbacher moved a Do Pass as Amended.

9:17 a.m. Representative Toman seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jim Jonas	Y
Representative Macy Bolinske	A
Representative Jayme Davis	N
Representative LaurieBeth Hager	N
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	A
Representative Lawrence R. Klemin	A
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

9:18 a.m. Motion passed 8-2-3

9:18 a.m. Representative Jonas will carry the bill.

9:18 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1307

Introduced by

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

Senators Hogue, Myrdal, Paulson

2-20-25
JK TAA

1 A BILL for an Act to amend and reenact sections 11-09.1-04 ~~and~~ 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 Ordinances in conflict with~~ state laws ~~void~~ - Exception - Filing of copies of**
9 **new charter.**

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

- 1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:
 - 7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.
 - 11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.
- 14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.
16 Sales and use taxes and gross receipts taxes levied under this chapter:
 - 17 a. Must conform in all respects with regard to the taxable or exempt status of items
18 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
19 at multiple rates with the exception of sales of manufactured homes or mobile
20 homes.
 - 21 b. May not be newly imposed or changed except to be effective on the first day of a
22 calendar quarterly period after a minimum of ninety days' notice to the tax
23 commissioner or, for purchases from printed catalogs, on the first day of a
24 calendar quarter after a minimum of one hundred twenty days' notice to the
25 seller.
 - 26 c. May not be limited to apply to less than the full value of the transaction or item as
27 determined for state sales and use tax, except for farm machinery gross receipts
28 tax purposes.
 - 29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 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 industry or activity regulated by state law or by rules adopted by a state agency. This subsection is subject to the provisions of section 62.1-01-03.

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

~~10-9.~~ Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township. This subsection is subject to the provisions of section 62.1-01-03.

~~11-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

~~12-11.~~ Contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

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

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

40-05.1-05. Ratification by majority vote - Supersession of existing charter and ~~Ordinances in conflict with~~ state laws in conflict therewith ~~void~~ - Exception - Filing of copies of new charter.

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

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

40-05.1-06. Powers.

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

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.
3. To 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 city at the same rate unless otherwise provided by law.
4. To 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 a municipality. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule city levies an infrastructure fee, the home rule city 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. To levy and collect excises, fees, charges, franchise and license taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a city lodging tax, and a city restaurant tax. For purposes of this section, any taxes imposed under this section 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. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of this section is invalid to the extent it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform with this subsection does not affect the validity of any other portion of the charter or ordinance of the eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section. Sales and use taxes and gross receipts taxes levied under this section:

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 purposes, except for farm machinery 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.

**REPORT OF STANDING COMMITTEE
HB 1307**

Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **AMENDMENTS (25.0079.01001)** and when so amended, recommends **DO PASS** (8 YEAS, 2 NAYS, 3 ABSENT OR EXCUSED AND NOT VOTING). HB 1307 was placed on the Sixth order on the calendar.

25.0079.01001
Title.

Prepared by the Legislative Council
staff for Representative Kasper
February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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 ~~and~~, 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~~Ordinances in conflict with~~ state laws ~~void~~ - Exception - Filing of copies of
9 new charter.

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:

7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.

11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.

14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.

16 Sales and use taxes and gross receipts taxes levied under this chapter:

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

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

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

29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 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

1 out its governmental and proprietary powers and to provide for public health, safety,
2 morals, and welfare. This subsection does not confer any authority to regulate any
3 industry or activity regulated by state law or by rules adopted by a state agency. This
4 subsection is subject to the provisions of section 62.1-01-03.

5 ~~9.8.~~ Lay out or vacate public grounds, and provide through its governing body for the
6 construction, use, operation, designation, and regulation of a county road system.

7 ~~10.9.~~ Provide for zoning, planning, and subdivision of public or private property within the
8 county limits but outside the zoning authority of any city or organized township. This
9 subsection is subject to the provisions of section 62.1-01-03.

10 ~~11.10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

11 ~~12.11.~~ Contract with and receive grants from any other governmental entity or agency, with
12 respect to any local, state, or federal program, project, or works.

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

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

19 **40-05.1-05. Ratification by majority vote - Supersession of existing charter**
20 **and ~~Ordinances in conflict with~~ state laws in conflict therewith ~~void~~ - Exception - Filing of**
21 **copies of new charter.**

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

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

3 **40-05.1-06. Powers.**

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

- 8 1. To acquire, hold, operate, and dispose of property within or without the corporate
9 limits, and, subject to chapter 32-15, exercise the right of eminent domain for such
10 purposes.
- 11 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
12 make payment of its debts and expenses; to contract debts, borrow money, issue
13 bonds, warrants, and other evidences of indebtedness; to establish charges for any
14 city or other services; and to establish debt limitations.
- 15 3. To levy and collect property taxes and special assessments for benefits conferred, for
16 its public and proprietary functions, activities, operations, undertakings, and
17 improvements, and establish mill levy limitations. Notwithstanding any authority
18 granted under this chapter, all property must be assessed in a uniform manner as
19 prescribed by the state board of equalization and the state supervisor of assessments
20 and all taxable property must be taxed by the city at the same rate unless otherwise
21 provided by law.
- 22 4. To levy and collect an infrastructure fee. The fee must replace a general special
23 assessment on all property for payment of infrastructure maintenance costs through a
24 utility bill issued by a municipality. The money collected under this subsection may not
25 be used for any purpose other than infrastructure maintenance costs. If a home rule
26 city levies an infrastructure fee, the home rule city also may levy and collect green field
27 special assessments. As used in this subsection:
 - 28 a. "General special assessments" means special assessments levied for the
29 purpose of maintaining existing roads and infrastructure and special
30 assessments levied for the construction or repair of arterial roads and
31 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. To levy and collect excises, fees, charges, franchise and license taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a city lodging tax, and a city restaurant tax. For purposes of this section, any taxes imposed under this section 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. After December 31, 2005, any portion of a charter or any portion of an ordinance passed pursuant to a charter which does not conform to the requirements of this section is invalid to the extent it does not conform. The invalidity of a portion of a charter or ordinance because it does not conform with this subsection does not affect the validity of any other portion of the charter or ordinance of the eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section. Sales and use taxes and gross receipts taxes levied under this section:

- 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 purposes, except for farm machinery 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.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
- 22 operation, and regulation thereof.
- 23 ~~12.~~ 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.~~ 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.~~ 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 ~~45.14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.

4 ~~46.15.~~ 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 ~~47.16.~~ 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.

2025 SENATE STATE AND LOCAL GOVERNMENT

HB 1307

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

HB 1307
3/21/2025

Relating to supersession of state election laws in home rule counties and cities.

9:06 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Lee and Walen.

Members Absent: Senator Braunberger

Discussion Topics:

- Abide by state law
- Home rule authority
- Valid ND I.D.
- Approval voting

9:06 a.m. Representative Kasper, District #46, introduced the bill and submitted testimony #43415.

9:11 a.m. Michael Howe, ND Secretary of State, testified in favor and submitted testimony #43418.

9:19 a.m. Stephanie Engebretson, Deputy Director, ND League of Cities, testified in opposition and submitted testimony #43399.

9:32 a.m. Terri Effertz, Lobbyist City of Fargo, testified in opposition.

Additional written testimony:

Eric Hanson, citizen, submitted testimony in opposition #41691.

Carol Sawicki, Board member League of Women Voters of ND, submitted testimony in opposition #41878.

Jeffrey Quam, citizen, submitted testimony in opposition #42584.

Zoe Absey, citizen, submitted testimony in opposition #42925.

Denise Kolpack, Deputy Mayor, City of Fargo, submitted testimony in opposition #43047.

Timothy Mahoney, Mayor City of Fargo, submitted testimony in opposition #43127.

Whitney Oxendahl, citizen of Fargo, submitted testimony in opposition #43230 and #43229.

Senate State and Local Government Committee

HB 1307

3/21/2025

Page 2

Jed Limke, Chair, Reform Fargo, submitted testimony in opposition #43281.

9:33 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

In support of Approval Voting

Good morning!

My name is Eric Hanson, and I am a constituent from Fargo (District 44). I would like to speak against HB 1107. I love approval voting! The city of Fargo voted handedly to use approval voting in the city elections, and it has been very successful. Approval voting simply allows people to choose all of the people they support in a local election vs choosing between a lot of people with the same views.

This bill is nothing more than a suppression of home rule charter and takes away local control over local elections. If the state of North Dakota decides how localities can vote, where does that stop? The people deserve to have their will heard and followed and not overturned by the state government. Please keep local elections local and do not regulate them at the state level. I urge a DO NOT PASS recommendation for HB 1107.



HB 1307
Senate State and Local Government Committee
March 21, 2025

Chair Roers and members of the Senate State and Local Government Committee:

My name is Carol Sawicki, and I am submitting this testimony on behalf of the League of Women Voters of North Dakota. **LWVND opposes House Bill 1307.**

The League of Women Voters supports legislation that allows local jurisdictions to explore alternative electoral methods and supports state election laws that allow for more options at both the state and local levels. HB 1307 states that “Any ordinance enacted or adopted by a county under a home rule charter in conflict with state law is void.” HB 1307 would prohibit localities from adopting alternative voting methods, thereby constricting rather than allowing more options. It also appears that Fargo, which adopted approval voting in 2018, is not grandfathered into the bill, so its use of an alternate voting system, which it has used successfully for three election cycles, would be prohibited.

Alternative voting systems, such as ranked choice and approval voting, have been adopted in various states and localities around the country. Ranked choice and approval voting methods allow voters to be more expressive with who they wish to represent them and ensure that the winner in an election will be the most popular candidate.

In the approval voting system used in Fargo city elections, voters choose as many candidates as they support without ranking them in any specific order. The candidate with a majority of support will generally win (unlike traditional plurality voting in which a candidate with the largest *minority* often wins). The Center for Election Science has determined that approval voting encourages candidates to build coalition and consensus, prevents voters from having to split their vote between similar candidates, and is an accurate and transparent voting system.¹

In November 2018, Fargo citizens voted 63.52% to 36.48% to amend the city charter to implement approval voting. The League of Women Voters of North Dakota supports the right of Fargo citizens to continue to vote using the method they have deemed most fair, simple, accurate, and consistent with ND Century Code 40-05.1-06 Subsection 9 which gives home rule cities the powers “to provide for all matters pertaining to city elections, except as to qualifications of electors.” In the three election cycles in which approval

¹ Why CES Advocates for Approval Voting. <https://electionscience.org/education/why-approval-voting>



voting has been used in Fargo, there have been no reports of voter confusion, no reports of election officials dislike of the system, and no delayed elections results.

Since HB 1307 would prevent North Dakota citizens from exercising their home rule constitutional rights and would prevent localities from implementing alternative voting methods, the **League of Women Voters of North Dakota strongly urges committee members to give HB 1307 a Do Not Pass recommendation.**

Thank you, Chair Roers and members of the committee, for your consideration of our testimony.

Carol Sawicki
LWVND Board Member
nodaklwv@gmail.com

In Opposition to HB 1307

I am Jeffrey Quam, a long time resident of Fargo and urge you to oppose SB 1307 which bans approval voting.

Approval Voting is very popular in Fargo

This goes against the spirit of home rule in the state and limits local counties and cities to govern themselves

Cities want to local control especially of something as important as voting.

Voting is not a one size fits all

I Urge you to oppose this bill.

Sincerely,
Jeffrey Quam

Chair Roers and Members of Senate State and Local Government Committee,

My name is Zoe Absey and I am here today in strong opposition to House Bill 1307, which would prohibit localities from adopting alternative voting methods. This bill undermines home rule and takes away the ability of local communities to decide what voting system works best for their residents.

Alternative voting methods, such as approval voting, allow voters to express their preferences more fully. Instead of being forced to choose between only two candidates, voters can rank multiple candidates in order of preference. This system provides a more accurate reflection of voter support and ensures that elected officials have broader backing from their constituents.

Local governments should have the right to choose the best electoral system for their communities. Stripping this authority limits innovation in democracy and prevents localities from implementing solutions that increase voter satisfaction and engagement.

I urge you to vote against HB 1307 and allow North Dakota's local governments to make decisions that best serve their voters. Thank you for your time and consideration.

Thank you,

Zoe Absey



March 21, 2025

Senate State and Local Government Committee
Representative Austen Schauer, Chair
HB 1307

RE: Testimony of Deputy Mayor Denise Kolpack, City of Fargo, in SUPPORT of HB 1307

Chairman Roers and Members of the Senate State and Local Government Committee, my name is Denise Kolpack and I am honored to serve as a Fargo City Commissioner since July 2022 and Deputy Mayor since July 2024.

In 2018, following 18 months of work by a citizens' task force to study a variety of election issues, citizens of Fargo initiated a measure to consider changing city elections to implement an approval voting process. The measure passed in the 2018 General Election, where more than 47,000 voters passed the measure with 64% approving. The process has been used in the last three elections.

Having read past testimony and a summation of the work of the task force, I know that one of the issues they were trying to solve for was the trend of having small percentages of voters – 15% - 20% - electing at-large city commissioners. I can tell you in my election, we had 15 candidates for two seats, and as the first-place vote getter in my election, I won with 43%.

I also believe approval voting is very intuitive and encourages more citizen engagement. In fact, when I decided to run for city commission in 2022, I leveraged approval voting as part of my campaign strategy. Basically, I asked voters and different constituencies if they heard or learned something about me that resonated with them, or supported, in this non-partisan office, to add me to their list of votes as a qualified candidate.

I have also had feedback that the approval voting process has been more favorable to one party over another. I can assure you that the current make-up of the Fargo City Commission, again a non-partisan office, has had very vocal political preferences as expressed by Commissioners themselves, across the entire political spectrum – including mine of remaining independently non-partisan.

Finally, I have also heard that some concern may be the lack of consistency in election processes. Across North Dakota there are many variations today from city to town – including candidates who are at-large as in Fargo, those coming from Wards, and combinations in-between.

I respectfully ask you, the members of this Committee, for a **DO NOT PASS** recommendation on House Bill 1307, which would negate the will of voters in Fargo who passed Approval Voting in Fargo overwhelmingly, and have now used it in three elections. Thank you for this opportunity.

Denise Kolpack

dkolpack@fargond.gov

701-730-2563



March 21, 2025

Senate State and Local Government Committee
Senator Kristin Roers, Chair
HB 1307

RE: Testimony of Dr. Timothy J. Mahoney, Mayor, City of Fargo, in OPPOSITION to HB 1307

Chair Roers and Members of the Senate State and Local Government Committee:

As Mayor of the City of Fargo, I submit this written testimony in OPPOSITION to HB 1307. While election conformity across North Dakota's political subdivisions is a laudable goal, it is also an impractical one given the various election procedures that have been approved over time by voters to reflect the wishes and interests of our cities. This includes the City of Fargo, where our voters sought, and approved, the approval voting procedure for City of Fargo elections in 2018.

Since the "yes" vote for approval voting by thousands of Fargo voters in 2018, approval voting has provided the opportunity for our residents to vote for their choices in large, contested races that feature several candidates. In the 3 City of Fargo elections in which approval voting has been successfully used since its approval in 2018, there have been no voter concerns or confusion with the procedure. Fargo's voters have understood how it works and have elected the candidates they have felt best represent their interests to serve on the Fargo City Commission.

Approval voting has provided Fargo voters with a fair and understandable way to sort and prioritize candidates in crowded candidate fields. In a city of this size, the cost of "run-off" elections, as an alternative, is unreasonable from a cost and election administration perspective. Approval voting has created a cost-effective method for our voters to make their wishes known without burdening the taxpayer with additional election costs. Approval voting has not dissuaded voter engagement or the ability for residents to run for office. Rather, it has allowed voters to navigate multiple choices and to fully express themselves in the voting booth.

For these reasons, I urge a **DO NOT PASS** recommendation on HB 1307; or alternatively, an exception for Fargo to continue to be permitted to utilize its current procedure.

Dr. Timothy J. Mahoney
Mayor
City of Fargo

Approval Voting in North Dakota

What is approval voting?

Approval voting allows you to vote for all the candidates you approve of. Instead of voting for one candidate on your ballot if one office is open, you can vote for any number of candidates you approve of in that race. The candidate who receives the most votes still wins.

Is approval voting the same as ranked-choice voting?

No, you are not ranking the candidates. You are instead voting for any you approve of. **Ranked choice voting isn't used in any North Dakota elections.**

Where is approval voting used?

The City of Fargo is the only jurisdiction in North Dakota that uses approval voting. It was approved by Fargo voters through a citizen-initiated ballot measure and has been used 3 times since to vote for city candidates.

Which Fargo city elections does approval voting apply to?

Approval voting applies to mayor, city commission, and municipal judge elections. It does not apply to school board or park board elections.

What is the origin of Fargo's approval voting?

In 2016, City Commissioners Tony Grindberg and Tony Gehrig proposed a Governance and Elections Task Force, which met publicly 10 times between September 2016 to January 2017. The task force studied various election methods then voted to recommend approval voting to the Fargo City Commission. The Commission didn't take action, so a city ballot initiative was filed to allow Fargo voters to weigh in. Signatures were gathered to place it on the November 2018 ballot.

What was the outcome of the vote on the ballot measure?

Over 47,000 Fargo voters weighed in. There were 30,092 votes in favor of adopting approval voting and 17,282 opposed, which means **63.52% voted in favor of adopting approval voting.**

What are the benefits of approval voting?

Approval voting is simple and straightforward, and there's no additional cost, as it works with current ballot machines. Approval voting is representative of the voters. Voters get to show full support to every candidate they believe in without fear of splitting their vote. Approval voting is especially helpful for Fargo voters when there's a large field of candidates to choose from, such as the June 2022 Fargo City Commission race where 15 candidates ran for 2 open seats.

What do Fargo voters think of approval voting?

According to polling done in June 2020, 71% said approval voting was easy, 62% said overall they liked approval voting, and 62% said they were comfortable with it. 69% said they felt they could vote for their favorite candidate without worrying about "electability."¹

¹ electionscience.org/newsroom/fargo-s-first-approval-voting-election-results-and-voter-experience

Testimony in Opposition to HB 1307
March 21, 2025

Chair and members of the committee, my name is Whitney Oxendahl and I am writing in opposition to HB 1307. I was one of the volunteers who gathered signatures for the approval voting ballot initiative in Fargo.

I got involved in the approval voting ballot initiative, because of recent city commission races. We had had large fields of candidates running for a small number of open seats, such as in 2016 there were 11 candidates running for two open seats. The top two candidates won with 30.4% and 28.1%, and approval voting was a simple solution to electing candidates with a higher percentage of voter support.

When gathering signatures for the ballot measure, approval voting had bipartisan support among signees. Some voters liked it because it gave them the freedom to choose any candidates they approved of. Others liked it because they were disillusioned with the low percentage of votes supporting the winners of city commission races. All around, people liked this voting method because it wouldn't cost anything to implement; it was compatible with our current ballot machines.

The approval voting ballot measure passed with nearly 2 out of 3 voters supporting it, and House Bill 1307 would override the will of Fargo voters.

The argument that it would make a patchwork of voting methods in our state is inconsistent with other aspects of voting. There are a handful of cities across the state that vote by ward while most others vote at-large for city commission or city council. Wahpeton employs a mix and elects some council members at-large and others by ward. These differences in city elections are due to each of those city's home rule charter, and more than 63% of Fargo voters chose to change the city's home rule charter to adopt approval voting locally in November 2018.

This is a local issue. The bill would solely impact the City of Fargo's voter-approved use of approval voting. Please give House Bill 1307 a Do Not Pass recommendation.

Thank you for the opportunity to share my testimony.

Dear Committee Members,

I'm asking you to **oppose HB 1307**. In 2018, Fargo voters exercised their rights and overwhelmingly approved approval voting for our local elections. Now, this bill doesn't just threaten to take that choice away—it would block every other city in North Dakota from ever making the same decision (and many others, given the broad language of the bill). *This isn't just about Fargo*. HB 1307 strips *all* communities of the ability to improve their *own* elections—it **usurps local control**. Legislators should protect their constituents' right to enact change, **not take it away**.

When approval voting was on the Fargo ballot back in 2018, **the measure won each-and-every precinct in Fargo**—it didn't matter if the precinct was red, blue, yellow, or purple—**voters chose approval voting**. Voters wanted a system that ensures the most widely supported candidate wins. It's simple, fair, and eliminates vote-splitting. We've held three successful elections utilizing it, consistently electing leaders spanning different political perspectives while giving everyone a voice in the process.

Approval voting is working.

Elections should reflect the will of the people. Whether someone agrees with approval voting or not, overturning a voter-led-and-approved reform without a public vote on the same sets a dangerous precedent. Please respect the decision Fargo's voters made by issuing a **DO NOT PASS recommendation for HB 1307**.

Thank you for your time,
Jed Limke
Chair, Reform Fargo

★ Reform Fargo is a locally-formed-and-operated non-profit focused on streamlining and improving government that's run entirely by volunteers living in the great State of North Dakota. *We care because this is our home.*



March 21, 2025

Senate State and Local Government

HB 1307

Senator Kristin Roers, 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. The bill was heavily amended in the House; however, the NDLC still has concerns about the bill in its current form.

The bill as currently written removes the ability for a city to use home rule authority to regulate local issues regarding elections and provides that any election related ordinances adopted using home rule authority is void. The bill appears to be aimed at one city where the residents circulated a petition and adopted amendments to their voting procedure to allow for approval voting in that city. There are several other individuals who have submitted testimony directly related to that situation so I will not cover that in depth, other than to say that HB 1297 will be heard in the Senate Judiciary Committee next week and that bill directly addresses approval and rank-choice voting as it relates to home rule authority.

In addition to that situation, this bill would limit other steps home rule cities can take related to addressing local concerns regarding elections. For example, some cities have considered decreasing the signature threshold for getting on the ballot. I am aware of other groups that have discussed modifying city elections in their city to include a primary and general election, similar to how county and state office elections are held. HB 1307 would prevent this local problem-solving from occurring in a city.

The most troubling part of HB 1307 is that it appears to impact the right to an initiative and referral process of resolutions and ordinances. Every home rule charter that I have reviewed has included provisions related to initiating and referring ordinances. Some of them also include the ability to refer a resolution. In other words, the right to circulate a petition for signatures and require an election. These rights reserved to the electors in home rule charters is usually broader than what state law provides. As this is election related, it appears adoption of HB 1307 would void those provisions in a home rule charter, as well as any ordinances adopted in accordance with those charter provisions. In some cities that would mean that this right is entirely eliminated.

Adopting HB 1307 limits the ability for cities to undertake local problem solving related to elections and appears to have unintended consequences with relation to initiating and referring city ordinances. The NDLC respectfully requests a Do Not Pass on HB 1307.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

City of Fargo,

Plaintiff,

vs.

State of North Dakota,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

File No. 09-2023-CV-02540

[¶1] This matter came before the Court on competing motions for summary judgment. Plaintiff, the City of Fargo ("the City"), requests judgment declaring that (1) recent amendments to N.D.C.C. § 40-05.1-06 and § 62.1-01-03 are unconstitutional, or (2) the amended provisions do not void Fargo Municipal Code ("F.M.C.") § 20-0403(C)(5)(e) and § 20-0402(T)(3). Defendant, the State of North Dakota ("the State"), requests dismissal of the City's complaint, alleging the amended provisions are constitutional and expressly preempt the City's ordinances.

[¶2] For the reasons discussed below, the State's motion for summary judgment is **GRANTED** and the City's motion for summary judgment is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

[¶3] The City is a home rule municipality with an adopted home rule charter. F.M.C., Home Rule Charter. The charter sets forth various powers of the City, including to provide for public health, safety, morals, and welfare; to define offenses against private persons and property; and to provide for zoning of property. *Id.* at Art. 3(G), (I), (K).

[¶4] The City has adopted use regulations for residential districts. Specific to this proceeding, F.M.C. § 20-0403(C)(5)(e) prohibits the sale of firearms and/or ammunition, and the production

of ammunition for sale or resale, as home occupations. Firearms and ammunition sales are also prohibited non-farm commercial uses in agricultural zoning districts. F.M.C. § 20-0402(T)(3).

[¶5] In 2023, the North Dakota Legislature passed House Bill (“HB”) 1340, amending N.D.C.C. § 40-05.1-06 on home rule powers and N.D.C.C. § 62.1-01-03 on political subdivision authority to regulate firearms, as follows:¹

40-05.1-06. Powers.

...

12. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof. This subsection is subject to the provisions of section 62.1-01-03.

...

14. To provide for zoning, planning, and subdivision of public or private property within the city limits. To provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law. This subsection is subject to the provisions of section 62.1-01-03.

....

62.1-01-03. Limitation on authority of political subdivision regarding firearms – Civil action.

1. A political subdivision, including home rule cities or counties, may not enact a zoning ordinance or any other ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

2. A political subdivision, including home rule cities or counties, may not enact a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition. All such existing ordinances are void.

3. This section does not limit the ability of a political subdivision, including home rule cities or counties, to enforce an ordinance or zoning regulation relating to a business operation if the restriction in the ordinance or regulation:

¹ Underlined language was added to the statute. Stricken language was removed from the statute.

a. Applies equally to all persons engaging in commerce within the area subject to the ordinance or regulation; and

b. Is not specifically related to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

4. The absence of a state law restriction relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition may not be construed to allow a political subdivision, including a home rule city or county, to enact an ordinance restricting the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.

5. A person aggrieved under ~~subsection 1~~ this section may bring a civil action against a political subdivision for damages as a result of an unlawful ordinance.

[¶6] On August 3, 2023, the City commenced this action against the State. Doc. No. 4. In its complaint, the City seeks declaratory judgment that (1) the recently amended statutes are unconstitutional as applied to the City's home rule charter and F.M.C. § 20-0403(C)(5)(e) and § 20-0402(T)(3), or (2) the recently amended statutes do not void the City's ordinances. Doc. No. 1. On August 23, 2023, the State answered. Doc. No. 7. Both parties moved for summary judgment. Doc. Nos. 21, 36.

LEGAL ANALYSIS

I. Standard of Review

[¶7] "Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law." Leet v. City of Minot, 2006 ND 191, ¶ 12, 721 N.W.2d 398. "Summary judgment is appropriate when either party is entitled to judgment as a matter of law, and no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or resolving the factual disputes would not alter the result." Ward v. Bullis, 2008 ND 80, ¶ 14, 748 N.W.2d 397.

In this case, the only issues before the Court involve questions of law pertaining to the State's ability to limit home rule authority and whether the State has preempted local ordinance. Summary judgment is appropriate in this matter.

[¶8] The City's only cause of action is for declaratory relief. Under North Dakota's Declaratory Judgment Act ("the Act"), any person, whose rights, status, or other legal relations are affected by a statute may have determined any question of construction or validity arising under the statute and may obtain a declaration of rights, status, or other legal relations thereunder. N.D.C.C. § 32-23-02. A "person" includes a municipality. N.D.C.C. § 32-23-13. The Act is remedial, and its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be construed and administered liberally. N.D.C.C. § 32-23-12. Courts review summary judgments in declaratory judgment actions under the same standard as other cases. Env't Driven Sols., LLC v. Dunn Cnty., 2017 ND 45, ¶ 6, 890 N.W.2d 841.

II. **Constitutionality of HB 1340**

[¶9] The City argues HB 1340 violates the plain language of Article VII of the North Dakota Constitution and its intent to provide maximum local self-government to home rule cities. The specific constitutional provisions the City claims have been violated are as follows:

Section 1. The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions.

Section 6. The legislative assembly shall provide by law for the establishment and exercise of home rule in counties and cities

N.D. Const., art. VII, §§ 1, 6 (emphasis added). The City contends these constitutional provisions require the legislature to enact home rule authority without limitation to enable maximum local

government, and HB 1340 has violated this constitutional directive by stripping away powers granted to home rule cities.²

[¶10] When interpreting the Constitution, it is the Court's "overriding objective to give effect to the intent and purpose of the people adopting the constitutional statement." City of Bismarck v. Fetting, 1999 ND 193, ¶ 8, 601 N.W.2d 247. "Such intent and purpose are to be found in the language of the constitution itself." Id. If the intentions of the people cannot be determined from the language itself, the Court may turn to other aids in construing the provision, including appropriate historical context. Id.

[¶11] Although Article VII, § 1 expresses intent for maximum local government functions, two issues are unclear: (1) the scope of home rule city authority, and (2) the extent, if any, to which the legislature may restrict such authority. The North Dakota Supreme Court has not yet addressed these issues. However, the Court has repeatedly examined the power provided to the legislature to grant authority to home rule cities.

[¶12] In Litten v. City of Fargo, the Court faced the issue of whether a home rule city had authority to change its form of government. 294 N.W.2d 628, 631 (N.D. 1980). At the time, Article VII, § 6 contained the following language:

The legislative assembly shall provide by law for the establishment of home rule cities and villages. It may authorize such cities and villages to exercise all or a portion of any power or function which the legislative assembly has power to devolve upon a nonhome rule charter and which is not denied to such city or village by its own home rule charter and which is not denied to all home rule cities and villages by statute. The legislative assembly shall not be restricted in granting of home rule powers to home rule cities and villages by section 183 of the constitution.

² To be clear, this case does not pertain to the constitutional right to bear arms under the United States Constitution or North Dakota Constitution. The constitutional issue in this case relates solely to home rule authority under Article VII of the state constitution.

[¶13] In light of this language, the Court noted the constitutional provision directed the legislature to enact laws authorizing home rule and permitted the legislature to devolve certain powers upon home rule cities. Litten, 294 N.W.2d at 631. Thus, according to the Court, “[t]his constitutional provision in itself does not grant any powers to home rule cities[,] [and] [w]hatever powers home rule cities may have are based upon statutory provisions.” Id. After examining the authority granted under N.D.C.C. ch. 40-05.1, the Court held home rule cities lacked authority to select any form of government they desired. Id. at 634. The Court reasoned that “the legislature did not intend, and the statutory provisions do not give, home rule cities [such] authority.” Id.

[¶14] Following Litten, a constitutional amendment was proposed and passed with the present language found in Article VII. See ch. 665, Proposed Const. Amend., Doc. No. 33. The Senate Judiciary Committee notes indicate “major” changes were extension of home rule to counties, ability of political subdivisions to transfer powers to the county, and removal of constitutional status from county offices. Id. at 82. Nothing in the legislative history indicates any intent to otherwise expand home rule authority of cities or change Litten’s holding that the legislature has authority to grant home rule powers.

[¶15] After the constitutional amendment, the Court reaffirmed the legislature’s authority to set limits on home rule authority in Pelkey v. City of Fargo, 453 N.W.2d 801 (N.D. 1990). The issue in Pelkey was whether residents in a home rule city had a constitutional right to change a city charter despite the legislature’s time restriction on such amendments. 453 N.W.2d 801, 803 (N.D. 1990). The Court interpreted Article III, § 1, consistent with Article VII, § 2, which gave the legislative assembly power to provide by law for the establishment and government of all political subdivisions. Id. at 805. Citing Litten, the Court acknowledged, “Whatever powers a home rule city may have are based upon statutory provisions.” Id. According to the Court, the

legislature is empowered to set forth how home rule charters may be enacted, amended, or repealed. Id. Therefore, the legislature acted within its authority to set time restrictions for reconsidering amendments to home rule charters. Id.

[¶16] The Court reiterated that home rule cities are bound by legislative limits in City of Fargo v. Malme, 2007 ND 137, 737 N.W.2d 390. In Malme, the issue was whether the City's creation of a layperson Administrative Enforcement Board conflicted with N.D.C.C. § 40-18-01, requiring municipal judges to be licensed to practice law. 2007 ND 137, ¶ 8. At the outset, the Court noted the legislature's constitutional power to provide for the establishment and exercise of home rule in cities. Id. at ¶ 9 (citing N.D. Const., art. VII, § 6). As stated by the Court, while home rule charters allow cities to enact laws contrary to those of the state, this ability "is not without limitation, because 'whatever powers a home rule city may have are based upon statutory provisions.'" Id. at ¶ 10 (citing Pelkey, 453 N.W.2d at 805). Supersession only applies if the home rule powers are enumerated in N.D.C.C. § 40-05.1-06, included in the home rule charter, and implemented by ordinance. Id. at ¶ 11. The Court held that N.D.C.C. § 40-05.1-06 did "not address, let alone authorize, the creation of an administrative system for adjudication." Id. at ¶ 14. The City also argued it had inherent authority to delegate adjudicative functions to administrative bodies. Id. Rejecting the argument, the Court concluded the home rule charter and statutory provisions relied upon could not be reasonably construed as providing the authority to create a layperson administrative adjudicatory board. Id.

[¶17] The legislative limitations of home rule cities were reexamined—and reaffirmed—in Sauby v. City of Fargo, 2008 ND 60, 747 N.W.2d 65. Sauby held a state statute precluded the City from imposing higher fees for noncriminal traffic offenses than those set by state law. 2008 ND 60, ¶ 13. The Court again announced, "[A] home rule city's power to enact ordinances that

supersede state law is not without limitation, because a home rule city's powers must be based upon statutory provisions." Id. at ¶ 6 (citing Malme, 2007 ND 137, ¶ 10). "[C]ities are creatures of statute and possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant." Id. (quoting Fettig, 1999 ND 193, ¶ 4). While the City did have statutory home rule authority under N.D.C.C. § 40-05.1-06 to enact traffic ordinances and penalties for violations, N.D.C.C. § 12.1-01-05 provided an express limitation, directing that all crimes defined by state law shall not be superseded, precluded the City from imposing a higher fine. Id. at ¶¶ 6, 13.

[¶18] None of the cases above squarely address the issue presented in this case of whether the legislature has constitutional authority to carve out limitations within the home rule powers it had once granted. However, it is undeniable from this long line of cases that the legislature has considerable power to shape home rule authority. As noted in Litten, the state constitution does not grant any powers to home rule cities; cities' powers are only bestowed by legislative action. Litten, 294 N.W.2d at 631 ("Whatever powers home rule cities may have are based upon statutory provisions."); see also Pelkey, 453 N.W.2d at 805. Further, these powers are not limitless; the Court has expressly indicated cities "possess only those powers and authorities granted by statute." Sauby, 2008 ND 60, ¶ 6; Malme, 2007 ND 137, ¶¶ 9-10; see also State ex rel. City of Minot v. Gronna, 59 N.W.2d 514, 529 (N.D. 1953) (stating, prior to the constitutional amendment allowing home rule cities, that "cities are creatures of statute and of the statute alone" and "[t]he state may withhold, grant or withdraw powers and privileges as it sees fit") (emphasis added). Because the North Dakota Supreme Court has repeatedly viewed home rule authority as subject to legislative action, this Court is unable to conclude that HB 1340, and its limitation of home rule powers, violates Article VII of the state constitution.

[¶19] The City cited several state constitutions from other jurisdictions—namely, Texas, Massachusetts, Minnesota, and Iowa—to emphasize that these constitutions include express limitations of home rule authority. According to the City, because Article VII of the North Dakota Constitution does not include similar limitations, the intent was that the legislature may not limit home rule authority. The Court does not find these constitutions comparable due to their differing language.

[¶20] For instance, the Texas Constitution provides that “[t]he adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature.” Tex. Const. art. XI, § 5. Texas courts have interpreted this clause broadly to mean that cities look to the general laws “not for specific grants of power, but to ascertain whether or not a specific power is denied them.” Pitre v. Baker, 111 S.W.2d 359, 361 (Tex. Civ. App. 1937). By contrast, the North Dakota Supreme Court has established that cities must look to the powers granted to them by statute. See Sauby, 2008 ND 60, ¶ 6.

[¶21] The Massachusetts and Iowa Constitutions differ, as well. Where these constitutions affirmatively grant municipalities home rule power not inconsistent with the state constitutions and general laws, the North Dakota Constitution contains the inverse, directing the legislature to “provide by law for the establishment and exercise of home rule.” Compare Mass. Const., art. LXXXIX, § 6 and Iowa Const., art. III, § 38A, with N.D. Const., art. VII, § 6.

[¶22] The Minnesota Constitution indicates the legislature “may” provide by law for the creation of local government units and their functions and local governments may adopt home rule charters when authorized by law. Minn. Const. art. XII, §§ 3-4. Similar to North Dakota, however, the Minnesota courts have stated municipalities can enact regulations only as “expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.”

Bicking v. City of Minneapolis, 891 N.W.2d 304, 312 (Minn. 2017); see Malme, 2007 ND 137, ¶ 9 (stating cities “possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant”). Therefore, “state law may limit the power of a city to act in a particular area.” Bicking, at 312 (emphasis added).

[¶23] Though not cited by either party, it is notable that both Alaska and New Mexico have similar home rule purpose statements in their respective constitutions for “maximum local self-government.” Alaska Const. art. X, § 1; N.M. Const., art. X, § 6(E). While the courts in Alaska and New Mexico have cited this language in liberally construing home rule powers in a municipality’s favor, it does not appear the courts have found the language provides, in and of itself, a basis for a constitutional violation if the state infringes on home rule city authority. See, e.g., Mobil Oil Corp. v. Local Boundary Comm’n, 518 P.2d 92, 99 (Alaska 1974) (reading the purpose “for maximum local self-government” to favor upholding organization of boroughs by the commission if the other requirements have been minimally met); State ex rel. Haynes v. Bonem, 845 P.2d 150, 151 (N.M. 1992) (holding “the purpose of the home rule amendment to [the] Constitution—to provide for maximum local self-government—would be frustrated by applying the statutes to a home rule municipality, because the subject of the legislation (composition of the municipal government) is a matter of local concern”). Alaska’s and New Mexico’s constitutional schemes are further distinguishable from North Dakota’s, affirmatively granting home rule cities all powers unless otherwise denied or prohibited. See Alaska Const. art. X, § 11 (stating “[a] home rule borough or city may exercise all legislative powers not prohibited by law or by charter”); N.M. Const. art. X, § 6(D) (municipalities adopting a home rule charter “may exercise all legislative powers and perform all functions not expressly denied by general law or charter”).

[¶24] In North Dakota, home rule cities are subject to the powers bestowed upon them by the legislature. Litten, 294 N.W.2d at 631. Although the purpose statement for “maximum local self-government” may show intent for broad local self-government authority, it does not express that home rule cities have limitless authority and further does not negate the other language in the Constitution, requiring the legislature to provide for the establishment and exercise of home rule in cities. N.D. Const., art. VII, §§ 1, 6. There is no language, as in other states, providing limitations on the legislative authority to do so aside only from the franchise of a public utility or similar service. See id. at § 11 (“The power of the governing body of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly); see, e.g., Apodaca v. Wilson, 525 P.2d 876, 881-82 (N.M. 1974) (noting the state constitution allows the legislature to expressly limit home rule authority by “general law,” which must be of general concern to the people of the state). Accordingly, it does not appear that the intent of the constitutional amendment was to provide home rule authority without any bounds or restrict the legislature in the manner in which it establishes the laws for exercise of home rule authority.

[¶25] The City also argues no provision of the constitution allows the State to amend a home rule charter once it has been voted and approved by the city’s residents. The City argues the amendments to home rule authority in N.D.C.C. § 40-05.1-06 cannot apply retroactively to amend the City’s already approved charter. The only authority the City cites in support of its position is N.D.C.C. § 40-05.1-07, which provides when a city may amend or repeal its home rule charter.

[¶26] The Court disagrees. While HB 1340 does change the authority of a home rule city, it does not necessitate any amendment to the home rule charter. Rather, it places limits on the extent to which the City may have ordinances to (1) define offenses against private persons and property

and (2) provide for zoning, planning, and subdivision of property. See N.D.C.C. § 40-05.1-06(12), (14).

[¶27] Additionally, regardless of N.D.C.C. § 40-05.1-06's limiting language, N.D.C.C. § 62.1-01-03 was also amended by HB 1340 and its express language supersedes the City's ordinance. See discussion supra at Section IV; see, e.g., Sauby, 2008 ND 60, ¶ 10 (holding "Fargo [was] empowered to define and enact both criminal and noncriminal offenses[, but] N.D.C.C. § 12.1-01-05 does not permit a home rule city to supersede criminal or noncriminal offenses defined by state law"); see also Easterday v. Village of Deerfield, 176 N.E.3d 187, 207 (Ill. 2020) (holding state law, which limited home rule powers and prohibited any inconsistent ordinance, preempted home rule city ordinance). Preemption under N.D.C.C. § 62.1-01-03 is not contingent on the amendment of N.D.C.C. § 40-05.1-06. See, e.g., Sauby, 2008 ND 60, ¶ 10. The amendments in N.D.C.C. § 40-05.1-06 simply reinforce the limitations for home rule cities in N.D.C.C. § 62.1-01-03.

[¶28] In North Dakota, a statute carries a strong presumption of constitutionality "unless the challenger clearly shows the statute contravenes the state . . . constitution." In re Craig, 545 N.W.2d 764, 766 (N.D. 1996). The City has not made a clear showing of the unconstitutionality of HB 1340. While the Court agrees that Article VII, § 1 of the North Dakota Constitution intends for "maximum local self-government," the law is not settled that this language alone provides home rule cities the right to legislate on topics the state legislature has limited. The Court further has difficulties squaring the bare purpose statement with the extensive precedent in our state allowing the legislature to establish home rule authority. Accordingly, the Court is required to resolve any doubts as to the statute's constitutionality in favor of its validity. Id.

[¶29] For the foregoing reasons, the Court concludes HB 1340 does not violate the North Dakota Constitution.

III. The City's Implied Powers

[¶30] The City alternatively argues it has implied powers to regulate solely local matters, such as zoning, and HB 1340 improperly restricts its municipal powers. The City relies on Fettig and its language that “[c]ities are creatures of statute and possess only those powers and authorities granted by statute or necessarily implied from an express statutory grant.” 1999 ND 93, ¶ 4 (emphasis added). The City further relies on Ebach v. Ralston, 469 N.W.2d 801 (N.D. 1991) as supporting the City’s implied authority under N.D.C.C. § 40-05.1-06(10)—allowing the City to provide for public health, safety, morals, and welfare.

[¶31] The Court does not find Ebach persuasive on the issue of the extent of the City’s implied powers based on N.D.C.C. § 40-05.1-06. Ebach involved no issues related to home rule authority or the implied powers a city may have based on an express grant of authority.

[¶32] Importantly, HB 1340 amended not only N.D.C.C. § 40-05.1-06, but also N.D.C.C. § 62.1-01-03, expressly precluding home rule cities from passing certain zoning ordinances. Therefore, the question here is whether the City can pass ordinances pertaining to matters of local interest as an implied power when the State has expressly limited the same.

[¶33] In North Dakota, “[t]he rule of strict construction applies to defining a municipality’s powers.” Haugland v. City of Bismarck, 2012 ND 123, ¶ 48, 818 N.W.2d 660. It is only after a municipality’s powers have been determined that the rule of strict construction no longer applies and “the manner and means of exercising those powers where not prescribed by the Legislature are left to the discretion of municipal authorities.” Id. The rule of strict construction must be applied in this case to first determine the City’s powers. In applying the rule, the limitations in HB 1340 have expressly restricted the City’s authority. Any implied authority of the City cannot override the express limitation by the State. See Bd. of Cnty. Comm’rs of Douglas Cnty. v.

Bainbridge, Inc., 929 P.2d 691, 707 (Colo. 1996) (holding the county did not have implied power to override clear, unambiguous, and definitive language by the legislature); see also Malme, 2007 ND 137, ¶ 14 (rejecting the city’s argument that it had “inherent authority” based on its home rule powers to create an administrative enforcement board because the charter and statutory provisions relied upon could not reasonably be construed to provide such power).

[¶34] The City has additionally cited several North Dakota Attorney General opinions, arguing these opinions establish home rule cities have authority to regulate solely local matters. See, e.g., 1998 N.D. Op. Att’y Gen. L-117. These opinions set forth a four-part test stating

A home rule political subdivision may exercise powers not allowed under state law if: (1) the Legislature granted it that power; (2) the political subdivision included that power in its home rule charter; (3) the political subdivision properly implemented the power through an ordinance; and (4) the power concerns only local, rather than statewide, matters.

Id. The authority relied on by the attorney general is Litten v. City of Fargo, 294 N.W.2d 628 (N.D. 1980).

[¶35] Assuming, without deciding, that this four-part test is accurate and applicable, the Court agrees with the City that the regulation of building uses is a matter of local, rather than statewide, concern. As discussed more in depth below in Section IV, the ordinances at issue are zoning in nature. Courts in several jurisdictions have held that zoning is a purely local issue. Nat’l Advertising Co. v. Dept. of Highways of State of Colo., 751 P.2d 632, 635 (Colo. 1988) (stating “a home-rule municipality’s control of land use within its borders through zoning legislation is a matter of local concern”); Gurba v. Comm. High Sch. Dist. No. 155, 40 N.E.3d 1, 5 (Ill. 2015) (“Included within the realm of home rule powers are municipal development regulations such as zoning ordinances, which undoubtedly pertain to local affairs.”); Bartle v. Zoning Bd. of Adjustment, 137 A.2d 239, 242 (Pa. 1958) (“Surely, there are few matters which are of less State-

wide concern and which are more local in scope than zoning inside the City of Philadelphia.”); see also Subdiv. Law & Growth Mgmt. § 1:18 (“Most home rule states treat zoning as a matter of local concern.”).

[¶36] Even if the fourth element is met, however, the first element cannot be met. Not only has the legislature not granted home rule cities the power to pass zoning ordinances impacting firearms or ammunition sales, it has expressly prohibited them from doing so.

[¶37] The Court is troubled that the state legislature has limited home rule authority on a purely local issue, such as zoning. The State has not advanced any statewide interest in prohibiting localities from regulating in this area and, indeed, no such interest appears to exist. The Court is concerned that the legislature’s ability to strip home rule authority in this instance could threaten home rule authority in the future. If the legislature continues to pare home rule powers, home rule cities lack the discretion to address important issues impacting their respective and unique communities. Home rule authority would, in essence, be rendered obsolete.

[¶38] Notwithstanding, based on the analysis above, the Court is unable to conclude that the City has implied authority over these local matters when the State has expressly limited its authority on this issue. Accordingly, the Court finds the City has not sufficiently established HB 1340 is void for infringing on any implied power of the City.

IV. Preemption

[¶39] The City alternatively requests a declaration from this Court that HB 1340 has not preempted F.M.C. § 20-0403(C)(5)(e) and § 20-0402(T)(3). The City argues the legislature has only expressly restricted criminal offenses and zoning ordinances related to firearms and ammunition sales, but has not restricted all other ordinances on the topic unless they are more restrictive than state law. The City contends it had the power to pass the ordinances pursuant to

its general power to provide for public health, safety, morals, and welfare under N.D.C.C. § 40-05.1-06(10), and its ordinances are not more restrictive than state law because there are no state laws on home occupations for firearms or ammunitions sales. The State argues the ordinances are zoning matters, and under HB 1340, all zoning ordinances on the topic, regardless of whether they are more restrictive than state law, are void. Thus, the State argues HB 1340 preempts F.M.C. § 20-0403(C)(5)(e) and § 20-0402(T)(3).

[¶40] In North Dakota, the preemption analysis involving state and local law mirrors federal preemption analysis. Env't Driven Sols., LLC, 2017 ND 45, ¶ 7. The three forms of preemption are (1) express preemption, (2) field preemption, and (3) conflict preemption. Id. State law expressly preempts an ordinance "when there is an explicit state law or rule restraining the [city's] authority." Id.; see also State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶ 19, 712 N.W.2d 828 ("Pre-emption fundamentally is a question of congressional intent, and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.") Field preemption exists "when the industry or activity involved is already subject to substantial state control through broad, encompassing statutes or rules." Env't Driven Sols., LLC, 2017 ND 45, ¶ 7. Finally, there is conflict preemption "where it is impossible for a private party to comply with both state and [local] requirements, or where [local] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the [legislature]." FreeEats.com, Inc., 2006 ND 84, ¶ 19.

[¶41] In this case, it is unnecessary to engage in field or conflict preemption analysis because the issue is resolved by looking only to express preemption. In passing HB 1340, the legislature restricted home rule authority in N.D.C.C. § 40-05.1-06(14) by noting that home rule city's powers "[t]o provide for zoning, planning, and subdivision of public or private property within the city

limits” are “subject to the provisions of section 62.1-01-03.” Under N.D.C.C. § 62.1-01-03(2), “[a] political subdivision, including home rule cities . . . , may not enact a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.” Unlike N.D.C.C. § 62.1-01-03(1), there is no requirement that the zoning ordinance be more restrictive than state law to be void. All zoning ordinances on the topic are void. N.D.C.C. § 62.1-01-03(2).

[¶42] Here, the City does not appear to contest that F.M.C. § 20-0403(C)(5)(e) and § 20-0402(T)(3) are zoning ordinances; the City only argues the ordinances are not “exclusively” for the purpose of zoning and were also implemented to ensure the character, livability, and safety of surrounding neighborhoods. Pl’s Br. in Supp. of Motion for Summ. J., Doc. No. 22 at ¶ 55 (emphasis added). The City certainly may have various reasons for passing the ordinances, including protection of the general welfare and safety, but the City cannot escape the fact that the ordinances, at their core, are zoning ordinances.

[¶43] Both ordinances are located within F.M.C.’s Land Development Code (“L.D.C.”). F.M.C. ch. 20. The L.D.C. was adopted pursuant to authority granted by, among others, chapter 40-47 of the North Dakota Century Code, entitled “City Zoning.” Id. § 20-0102. N.D.C.C. § 40-47-01 explains “[f]or the purpose of promoting health, safety, morals, or the general welfare,” the governing body of a city may regulate and restrict the “use of buildings, structures, and land for trade, industry, residence, or other purposes.” The purpose of the L.D.C. reinforces that it implements Fargo’s Comprehensive Plan and related policies “in a manner that protects the health, safety, and general welfare of the citizens of Fargo.” F.M.C. § 20-0104.

[¶44] Under the L.D.C., “no land use may occur except in accordance with all of the regulations established by [the L.D.C.] for the zoning district in which the building, structure or land use is

located.” Id. at § 20-0105. The two regulations at issue in this case are (1) a prohibition of firearms and ammunition sales as a non-farm commercial use in agricultural districts and (2) a prohibition of firearms and ammunition sales as a home occupation in residential districts. F.M.C. §§ 20-0403(C)(5)(e), 20-0402(T)(3). Although these regulations may ultimately impact health, safety, and general welfare of the City’s residents, they regulate land or building use. See Black’s Law Dictionary (11th ed. 2019) (defining “zoning” as “[t]he legislative division of a region, esp. a municipality, into separate districts with different regulations within the districts for land use, building size, and the like”).

[¶45] Given the language of the ordinances in the L.D.C. and their function in regulating use of land or buildings, the Court concludes F.M.C. § 20-0403(C)(5)(e) and § 20-0402(T)(3) are zoning ordinances. See Powell v. City of Houston, 580 S.W.3d 391, 402-03 (Tex. Ct. App. 2019) (considering the plain language, purpose, and function of an ordinance to determine whether it implicated zoning regulations). Under HB 1340, the legislature made its intent clear: to prohibit any and all local zoning ordinances relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition. See FreeEats.com, Inc., 2006 ND 84, ¶ 19 (looking to explicit statutory language to determine intent for express preemption analysis). Because the zoning ordinances in this case restrict the sale of firearms and ammunition, HB 1340 expressly preempts and voids them.

CONCLUSION AND ORDER

[¶46] Based on the foregoing, the State’s motion for summary judgment is **GRANTED**, and the City’s motion for summary judgment is **DENIED**.

[¶47] The City’s complaint is dismissed with prejudice.

[¶48] Counsel for the State is to prepare and submit the proposed judgment to the Court within seven days of the date of this order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 20 day of February, 2024.

BY THE COURT:



Hon. Cherie L. Clark
Judge of District Court

Kasper, Jim M.

From:

Wrigley, Drew H. <dwwrigley@nd.gov>

To:

Monday, February 3, 2025 10:34 PM

Kasper, Jim M.

Subject:

Fw: Docs

Attachments:

24 - Opinion Affirmed.pdf; 49 - Order Granting [36] and Denying [21].pdf

Jim—

Here's that Supreme Court opinion we recently received regarding home rule cities and the constitutional authority the Legislature retains to define the contours of home rule autonomy. Very solid opinion in favor of the state, defending the Legislature's work—

~Drew

Drew H. Wrigley

Attorney General

North Dakota

**SENATE STATE AND LOCAL GOVERNMENT COMMITTEE
SENATOR KRISTIN ROERS, CHAIR****TESTIMONY PRESENTED BY****MICHAEL HOWE, NORTH DAKOTA SECRETARY OF STATE**

Chairman Roers and members of the committee, I'm Michael Howe, North Dakota Secretary of State. I'm here in favor of HB 1307. This bill provides for uniform elections across the state which I believe supports election integrity and helps public understanding and confidence in our elections.

Current home rule authority allows cities and counties to propose and adopt practices that may be in conflict with statewide election administration. While this may seem like a local control mechanism, it can result in issues that can create election integrity questions and diminish voter confidence. Here's a few examples of the types of issues that can result when uniformity is not the norm.

- Some political subdivisions through home rule have chosen to forgo the petition process outlined in statute in which candidates seek public support through signatures to gain access to the ballot. Rather, candidates pay a fee to the political subdivision to get on the ballot. This "buy-in" for ballot access is not something that would be allowed if local election processes needed to follow state law. We believe interested candidates should be able to gather signatures from those they would be representing to gain ballot access.
- In other areas, citizens have tried to bring home rule petitions to change elections processes. The most recent of these was in Walsh County where the petition proposed under their home rule charter sought to remove Walsh County from following statewide election law and best practices. This included using tabulation methods not certified by the State of North Dakota or the United States Election Assistance Commission. It would have prohibited voting by mail and voting early. It would have allowed for ballots to be taken out of the possession of the county recorder at any time, for any reason. And created an untrained citizen oversight board of the county election officials.
- A recent special election held in Fargo required citizens to complete a "certificate of affirmation," affirming that they resided in the city before they were allowed to vote. They were asked to present North Dakota ID, however there was an additional requirement of this "affirmation" before voting was allowed. This was not equal treatment under the law and raised several questions from concerned citizens to our office.

North Dakota has been proactive in putting in place important election integrity safeguards that protect our elections. The ability to adopt alternate election processes under home rule charter undermines these important measures already in statute, such as:

- North Dakota only uses paper ballots in elections. What if a county or city adopted a home rule ordinance that said they could vote digitally and allowed citizens to vote using their phone, without valid North Dakota ID?
- That brings us to North Dakota's ID law, which ensures only qualified electors who are U.S. citizens are allowed to vote. Are we OK if a community through home rule decides it's OK to vote in their elections if you just sign a certification or attestation that you live there to vote?
- North Dakota has banned private money for use in elections – aka "Zuckerbucks." Could a city use home rule to make it OK to take private money to run their election to help balance their budget?
- We do not mass mail ballots. You must verify you are a qualified elector through our ID law to receive a ballot in North Dakota, whether by absentee or in person. Is it OK for a city or county to use home rule to simply send ballots to every citizen without verification that they are indeed a qualified elector?
- Ballot handling equipment is NEVER connected to the internet. If a home rule ordinance said they could vote digitally or use an unauthorized third-party vendor to conduct a North Dakota election, is that OK with us?

We want to protect against processes that could hinder the security of our elections such as a political subdivision adopting processes that could impact election integrity and uniformity under the law. We should all want to ensure our elections remain secure and champion voters having a similar experience no matter where they live in North Dakota.

Chair Roers and members of the committee, I ask you to support a DO PASS recommendation for HB 1307. Our office prefers a uniform election system at all levels of government as opposed to unorthodox election methods sporadically implemented across the state.

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

HB 1307
4/10/2025

Relating to supersession of state election laws in home rule counties and cities.

9:23 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Protect the charter
- Park districts
- Laws set at state level
- Cities, parks and school boards ability to adjust

9:24 a.m. Chair Roers opened the hearing up for discussion on proposed amendment testimony #44891.

9:29 a.m. Sandra McMerty, Deputy Secretary of State, answered questions from the committee.

9:32 a.m. Kory Peterson, League of Cities, answered questions from the committee.

9:35 a.m. Senator Walen moved Amendment LC #25.0079.02002.

9:35 a.m. Senator Lee seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

9:36 a.m. Senator Barta moved Do Pass as amended.

9:36 a.m. Senator Walen seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y

Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

Senator Castaneda will carry the bill.

9:37 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 4/10/25
1 of 9

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, and 40-49-07 of the North Dakota Century Code, relating to ~~supersession of state~~
3 election laws in home rule counties and cities and nominating petition signature thresholds in
4 park districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

- 1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:
 - 7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.
 - 11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.
- 14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.
16 Sales and use taxes and gross receipts taxes levied under this chapter:
 - 17 a. Must conform in all respects with regard to the taxable or exempt status of items
18 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
19 at multiple rates with the exception of sales of manufactured homes or mobile
20 homes.
 - 21 b. May not be newly imposed or changed except to be effective on the first day of a
22 calendar quarterly period after a minimum of ninety days' notice to the tax
23 commissioner or, for purchases from printed catalogs, on the first day of a
24 calendar quarter after a minimum of one hundred twenty days' notice to the
25 seller.
 - 26 c. May not be limited to apply to less than the full value of the transaction or item as
27 determined for state sales and use tax, except for farm machinery gross receipts
28 tax purposes.
 - 29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 tax, and must be administered by the tax commissioner in accordance with the

1 relevant provisions of chapter 57-39.2, including reporting and paying
2 requirements, correction of errors, payment of refunds, and application of penalty
3 and interest.

4 After December 31, 2005, any portion of a charter or any portion of an ordinance or
5 act of a governing body of a home rule county passed pursuant to a charter which
6 does not conform to the requirements of this subsection is invalid to the extent that it
7 does not conform. The invalidity of a portion of a charter or ordinance or act of a
8 governing body of a home rule county because it does not conform to this subsection
9 does not affect the validity of any other portion of the charter or ordinance or act of a
10 governing body of a home rule county or the eligibility for a refund under section
11 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation
12 equipment, and farm machinery repair parts used exclusively for agricultural purposes,
13 or on alcoholic beverages, which were in effect on December 31, 2005, become gross
14 receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017,
15 may not allow for the collection and levy of any tax not otherwise specified under this
16 section.

17 6. Provide for county elected and appointed officers and employees, their selection,
18 powers, duties, qualifications, and compensation, and the terms of county appointed
19 officers and employees. However, after adoption of a home rule charter, a county
20 elected office may not be eliminated or combined with another office except upon
21 approval of a majority of the electors of the county voting upon the question at a
22 primary or general election or pursuant to the county officer combination, separation,
23 or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish
24 the term of office for which a current county officer was elected, redesignate that
25 elected office during that term as appointed, or reduce the salary of the office for that
26 term. This subsection does not authorize a county to redesignate the elected offices of
27 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

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

30 8. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil
31 and criminal penalties for violation of ordinances, resolutions, and regulations to carry

1 out its governmental and proprietary powers and to provide for public health, safety,
2 morals, and welfare. This subsection does not confer any authority to regulate any
3 industry or activity regulated by state law or by rules adopted by a state agency. This
4 subsection is subject to the provisions of section 62.1-01-03.

5 ~~9-8.~~ Lay out or vacate public grounds, and provide through its governing body for the
6 construction, use, operation, designation, and regulation of a county road system.

7 ~~10-9.~~ Provide for zoning, planning, and subdivision of public or private property within the
8 county limits but outside the zoning authority of any city or organized township. This
9 subsection is subject to the provisions of section 62.1-01-03.

10 ~~11-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

11 ~~12-11.~~ Contract with and receive grants from any other governmental entity or agency, with
12 respect to any local, state, or federal program, project, or works.

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

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

19 **40-05.1-05. Ratification by majority vote - Supersession of existing charter and state**
20 **laws in conflict therewith - Exception - Filing of copies of new charter.**

21 If a majority of the qualified voters voting on the charter at the election vote in favor of the
22 home rule charter, the charter is ratified and is the organic law of the city, and extends to all its
23 local and city matters, unless limited by law. The charter and the ordinances made pursuant to
24 the charter in such matters, except for matters pertaining to city elections, supersede within the
25 territorial limits and other jurisdiction of the city any law of the state in conflict with the charter
26 and ordinances and must be liberally construed for such purposes. Any Except as provided
27 under subsection 9 of section 40-05.1-06, any ordinance enacted or adopted by a city
28 pertaining to city elections under a home rule charter in conflict with state law is void. One copy
29 of the charter ratified and approved must be filed with the secretary of state and one with the
30 auditor of the city to remain as a part of its permanent records. ~~Thereupon the~~ The courts shall
31 take judicial notice of the new charter upon its filing.

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

40-05.1-06. Powers.

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

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and, subject to chapter 32-15, exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services; and to establish debt limitations.
3. To 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 city at the same rate unless otherwise provided by law.
4. To 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 a municipality. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule city levies an infrastructure fee, the home rule city 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.

- 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~~ Notwithstanding section 40-21-07, to provide for all matters pertaining to ~~city~~
17 ~~elections, except as to qualifications of electors~~ signature thresholds for nominating
18 petitions for candidates for city offices.
- 19 10. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
20 regulations to carry out its governmental and proprietary powers and to provide for
21 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 22 ~~11.10.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
23 operation, and regulation thereof.
- 24 ~~12.11.~~ To define offenses against private persons and property and the public health, safety,
25 morals, and welfare, and provide penalties for violations thereof. This subsection is
26 subject to the provisions of section 62.1-01-03.
- 27 ~~13.12.~~ To engage in any utility, business, or enterprise permitted by the constitution or not
28 prohibited by statute or to grant and regulate franchises therefor to a private person,
29 firm, corporation, or limited liability company.
- 30 ~~14.13.~~ To provide for zoning, planning, and subdivision of public or private property within the
31 city limits. To provide for such zoning, planning, and subdivision of public or private

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

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

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

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

It is the intention of this chapter 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. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

SECTION 5. AMENDMENT. Section 40-49-07 of the North Dakota Century Code is amended and reenacted as follows:

40-49-07. Election and qualification of members of board of park commissioners.

1. The members of the board of park commissioners shall possess the qualifications of electors of the city and must be elected by the qualified electors of the park district.

The members of the first board may be elected at any regular city election or at a special election called for that purpose by the governing body of the city.

~~Thereafter,~~ After the first board is elected, the members of the board must be elected at the regular city elections. ~~Such~~

2. The elected members shall qualify by the first day of July following their election by taking and filing with the city auditor the oath prescribed for civil officers. The board of park commissioners may enter into an agreement with the governing body of the city concerning sharing of election personnel, printing of election materials, and apportioning of election expenses.

3. The board of park commissioners may adopt the same signature threshold for nominating petitions for candidates to the board of park commissioners when a city governing board has exercised its authority under subsection 9 of section 40-05.1-06 to change the signature threshold for nominating petitions for city candidates.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1307**

State and Local Government Committee (Sen. Roers, Chairman) recommends **AMENDMENTS** ([25.0079.02002](#)) and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1307 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0079.02002
Title.

Prepared by the Legislative Council
staff for Senator Roers
April 9, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO 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, and 40-49-07 of the North Dakota Century Code, relating to ~~supersession of state~~
3 election laws in home rule counties and cities and nominating petition signature thresholds in
4 park districts.

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

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

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

10 If a majority of the qualified electors voting on the charter at the election vote in favor of the
11 home rule charter, it is ratified and becomes the organic law of the county on the first day of
12 January or July next following the election, and extends to all its county matters, unless limited
13 by law. The charter and the ordinances made pursuant to the charter in county matters, except
14 for matters pertaining to county elections, must be liberally construed to supersede within the
15 territorial limits and jurisdiction of the county any conflicting state law except for any state law as
16 it applies to cities or any power of a city to govern its own affairs, without the consent of the
17 governing body of the city. Any ordinance enacted or adopted by a county pertaining to county
18 elections under a home rule charter in conflict with state law is void. The charter may not
19 authorize the enactment of ordinances to diminish the authority of a board of supervisors of a
20 township or to change the structure of township government in any organized civil township,

1 without the consent of the board of supervisors of the township. ~~No~~An ordinance of a home rule
2 county ~~shall~~may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as
3 ratified and approved must be filed with the secretary of state; one with the recorder for the
4 county, unless the board of county commissioners designates a different official; and one with
5 the auditor of the county to remain as a part of its permanent records. Courts shall take judicial
6 notice of the charter.

7 **SECTION 2. AMENDMENT.** Section 11-09.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **11-09.1-05. Powers.**

10 After the filing with the secretary of state of a charter approved in reasonable conformity
11 with this chapter, the county and its citizens may, if included in the charter and implemented
12 through ordinances:

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,
17 warrants, and other evidences of indebtedness; establish charges for any county or
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. Levy and collect property taxes and special assessments for benefits conferred, for its
20 public and proprietary functions, activities, operations, undertakings, and
21 improvements, and establish mill levy limitations. Notwithstanding any authority
22 granted under this chapter, all property must be assessed in a uniform manner as
23 prescribed by the state board of equalization and the state supervisor of assessments
24 and all taxable property must be taxed by the county at the same rate unless
25 otherwise provided by law. A charter or ordinance or act of a governing body of a
26 home rule county may not supersede any state law that determines what property or
27 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
28 the governing body of a home rule county may not supersede section 11-11-55.1
29 relating to the sixty percent petition requirement for improvements and of section
30 40-22-18 relating to the barring proceeding for improvement projects.

- 1 4. Levy and collect an infrastructure fee. The fee must replace a general special
2 assessment on all property for payment of infrastructure maintenance costs through a
3 utility bill issued by the county. The money collected under this subsection may not be
4 used for any purpose other than infrastructure maintenance costs. If a home rule
5 county levies an infrastructure fee, the home rule county also may levy and collect
6 green field special assessments. As used in this subsection:
- 7 a. "General special assessments" means special assessments levied for the
8 purpose of maintaining existing roads and infrastructure and special
9 assessments levied for the construction or repair of arterial roads and
10 infrastructure that provide a benefit to the entire community.
- 11 b. "Green field special assessments" means special assessments levied for
12 infrastructure costs associated with the development of agricultural or
13 undeveloped property.
- 14 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic
15 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.
16 Sales and use taxes and gross receipts taxes levied under this chapter:
- 17 a. Must conform in all respects with regard to the taxable or exempt status of items
18 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
19 at multiple rates with the exception of sales of manufactured homes or mobile
20 homes.
- 21 b. May not be newly imposed or changed except to be effective on the first day of a
22 calendar quarterly period after a minimum of ninety days' notice to the tax
23 commissioner or, for purchases from printed catalogs, on the first day of a
24 calendar quarter after a minimum of one hundred twenty days' notice to the
25 seller.
- 26 c. May not be limited to apply to less than the full value of the transaction or item as
27 determined for state sales and use tax, except for farm machinery gross receipts
28 tax purposes.
- 29 d. Must be subject to collection by the tax commissioner under an agreement under
30 section 57-01-02.1, with the exception of a county lodging or county restaurant
31 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

1 out its governmental and proprietary powers and to provide for public health, safety,
2 morals, and welfare. This subsection does not confer any authority to regulate any
3 industry or activity regulated by state law or by rules adopted by a state agency. This
4 subsection is subject to the provisions of section 62.1-01-03.

5 ~~9-8.~~ Lay out or vacate public grounds, and provide through its governing body for the
6 construction, use, operation, designation, and regulation of a county road system.

7 ~~10-9.~~ Provide for zoning, planning, and subdivision of public or private property within the
8 county limits but outside the zoning authority of any city or organized township. This
9 subsection is subject to the provisions of section 62.1-01-03.

10 ~~11-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

11 ~~12-11.~~ Contract with and receive grants from any other governmental entity or agency, with
12 respect to any local, state, or federal program, project, or works.

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

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

19 **40-05.1-05. Ratification by majority vote - Supersession of existing charter and state**
20 **laws in conflict therewith - Exception - Filing of copies of new charter.**

21 If a majority of the qualified voters voting on the charter at the election vote in favor of the
22 home rule charter, the charter is ratified and is the organic law of the city, and extends to all its
23 local and city matters, unless limited by law. The charter and the ordinances made pursuant to
24 the charter in such matters, except for matters pertaining to city elections, supersede within the
25 territorial limits and other jurisdiction of the city any law of the state in conflict with the charter
26 and ordinances and must be liberally construed for such purposes. Any **Except as provided**
27 under subsection 9 of section 40-05.1-06, any ordinance enacted or adopted by a city
28 pertaining to city elections under a home rule charter in conflict with state law is void. One copy
29 of the charter ratified and approved must be filed with the secretary of state and one with the
30 auditor of the city to remain as a part of its permanent records. ~~Thereupon the~~ The courts shall
31 take judicial notice of the new charter upon its filing.

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

3 **40-05.1-06. Powers.**

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

- 8 1. To acquire, hold, operate, and dispose of property within or without the corporate
9 limits, and, subject to chapter 32-15, exercise the right of eminent domain for such
10 purposes.
- 11 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
12 make payment of its debts and expenses; to contract debts, borrow money, issue
13 bonds, warrants, and other evidences of indebtedness; to establish charges for any
14 city or other services; and to establish debt limitations.
- 15 3. To levy and collect property taxes and special assessments for benefits conferred, for
16 its public and proprietary functions, activities, operations, undertakings, and
17 improvements, and establish mill levy limitations. Notwithstanding any authority
18 granted under this chapter, all property must be assessed in a uniform manner as
19 prescribed by the state board of equalization and the state supervisor of assessments
20 and all taxable property must be taxed by the city at the same rate unless otherwise
21 provided by law.
- 22 4. To levy and collect an infrastructure fee. The fee must replace a general special
23 assessment on all property for payment of infrastructure maintenance costs through a
24 utility bill issued by a municipality. The money collected under this subsection may not
25 be used for any purpose other than infrastructure maintenance costs. If a home rule
26 city levies an infrastructure fee, the home rule city also may levy and collect green field
27 special assessments. As used in this subsection:
 - 28 a. "General special assessments" means special assessments levied for the
29 purpose of maintaining existing roads and infrastructure and special
30 assessments levied for the construction or repair of arterial roads and
31 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~~ Notwithstanding section 40-21-07, to provide for all matters pertaining to city-
17 ~~elections, except as to qualifications of electors~~ signature thresholds for nominating
18 petitions for candidates for city offices.
- 19 10. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
20 regulations to carry out its governmental and proprietary powers and to provide for
21 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 22 ~~11.10.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
23 operation, and regulation thereof.
- 24 ~~12.11.~~ To define offenses against private persons and property and the public health, safety,
25 morals, and welfare, and provide penalties for violations thereof. This subsection is
26 subject to the provisions of section 62.1-01-03.
- 27 ~~13.12.~~ To engage in any utility, business, or enterprise permitted by the constitution or not
28 prohibited by statute or to grant and regulate franchises therefor to a private person,
29 firm, corporation, or limited liability company.
- 30 ~~14.13.~~ To provide for zoning, planning, and subdivision of public or private property within the
31 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.

14 **SECTION 5. AMENDMENT.** Section 40-49-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **40-49-07. Election and qualification of members of board of park commissioners.**

17 1. The members of the board of park commissioners shall possess the qualifications of
18 electors of the city and must be elected by the qualified electors of the park district.

19 The members of the first board may be elected at any regular city election or at a
20 special election called for that purpose by the governing body of the city.

21 ~~Thereafter,~~After the first board is elected, the members of the board must be elected at
22 the regular city elections. ~~Such~~

23 2. The elected members shall qualify by the first day of July following their election by
24 taking and filing with the city auditor the oath prescribed for civil officers. The board of
25 park commissioners may enter into an agreement with the governing body of the city
26 concerning sharing of election personnel, printing of election materials, and
27 apportioning of election expenses.

28 3. The board of park commissioners may adopt the same signature threshold for
29 nominating petitions for candidates to the board of park commissioners when a city
30 governing board has exercised its authority under subsection 9 of section 40-05.1-06
31 to change the signature threshold for nominating petitions for city candidates.