

MUNICIPAL GOVERNMENT

CHAPTER 303

HOUSE BILL NO. 1419

(Representatives Dockter, Bosch, Heinert, Klemin, Meier, Nathe)
(Senators Dever, Poolman)

AN ACT to create and enact a new section to chapter 40-22 of the North Dakota Century Code, relating to the authority of a city to levy an infrastructure fee in lieu of special assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to levy an infrastructure fee in lieu of special assessments and special assessment fund balances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-05. Powers.

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

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

4. 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 the county. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule county levies an infrastructure fee, the home rule county also may levy and collect green field special assessments. As used in this subsection:
 - a. "General special assessments" means special assessments levied for the purpose of maintaining existing roads and infrastructure and special assessments levied for the construction or repair of arterial roads and infrastructure that provide a benefit to the entire community.
 - b. "Green field special assessments" means special assessments levied for infrastructure costs associated with the development of agricultural or undeveloped property.
5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a county lodging tax, and a county restaurant tax. Sales and use taxes and gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of manufactured homes or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a county lodging or county restaurant tax, and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31,

2005, become gross receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section.

- 5-6. 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.
- 6-7. Provide for all matters pertaining to county elections, except as to qualifications of electors.
- 7-8. 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. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.
- 8-9. 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.
- 9-10. 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.
- 10-11. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 11-12. 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 2. AMENDMENT. Section 11-11-55.1 of the North Dakota Century Code is amended and reenacted as follows:

11-11-55.1. Petition or resolution for improvements - Levy of special assessments - Levy of infrastructure fee.

1. The board of county commissioners of any county, by resolution or upon receipt of a petition of sixty percent of the landowners in a defined area,

outside of the limits of any incorporated city, may install the petitioned improvements as benefit the defined area, provide for the financing of the improvements, and levy special assessments for the payment of all or part of the improvements within the defined area.

2. The board of county commissioners, by resolution or upon petition of sixty percent of the qualified electors who voted in the last general election in a defined area, may levy and collect an infrastructure fee in lieu of general special assessments on all residential and commercial county utility bills for payment of infrastructure maintenance costs. If a home rule county levies an infrastructure fee, the home rule county also may levy and collect green field special assessments.
3. In providing for the improvements, the county shall have the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and 40-28, and the county shall comply with the provisions of those chapters in making the improvements. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action.
4. As used in this section:
 - 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.

SECTION 3. 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 or 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.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and must be administered by the tax commissioner in

accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

- 5-6. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
- 6-7. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government, including its governing body, executive officer, and city officers.
- 7-8. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
- 8-9. To provide for all matters pertaining to city elections, except as to qualifications of electors.
- 9-10. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
- 40-11. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
- 44-12. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
- 42-13. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, corporation, or limited liability company.
- 43-14. 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.
- 44-15. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 45-16. 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.
- 46-17. 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 4. A new section to chapter 40-22 of the North Dakota Century Code is created and enacted as follows:

Power of municipality to defray expense of improvements - Infrastructure fee.

1. Notwithstanding section 40-22-01, a municipality may 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 municipality levies an infrastructure fee, the municipality also may levy and collect green field special assessments.
2. As used in this section:
 - 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.

SECTION 5. AMENDMENT. Section 40-23-21 of the North Dakota Century Code is amended and reenacted as follows:

40-23-21. Use of collections of subsequent assessments.

1. All collections of special assessments levied pursuant to sections 40-23-17 through 40-23-21 shall be credited as received to the special fund maintained by the municipality for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds which were issued to finance the improvement for which the assessments were levied, or, if no such obligations are outstanding, to such fund as the governing body may direct.
2. If a governing body of a municipality levied and collected an infrastructure fee under section 4 of this Act, the funds generated by the fee must be used for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds issued to finance the improvement. The governing body of a municipality may not use funds generated by an infrastructure fee imposed after the effective date of this Act for the payment of any outstanding special improvement warrants, refunding improvement bonds, general obligation bonds, or revenue bonds, issued before the effective date of this Act for the purpose of financing green field special assessments, as defined in section 40-05.1-06.

Approved April 19, 2021

Filed April 20, 2021

CHAPTER 304

HOUSE BILL NO. 1130

(Representatives Lefor, Steiner)
(Senator Wardner)

AN ACT to create and enact sections 40-18-14.1, 40-18-14.2, 40-18-14.3, 40-18-14.4, and 40-18-14.5 of the North Dakota Century Code, relating to the authority of the municipal court to execute judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-18-14.1 of the North Dakota Century Code is created and enacted as follows:

40-18-14.1. Judgment for fine or costs.

If the judgment provided for in section 40-18-14 imposes a fine or assesses a cost, the municipal judge may order an authenticated copy of the judgment be filed in the office of the clerk of any district court of any county in the state. The clerk of district court shall treat the municipal court judgment in the same manner as a civil judgment of any district court of any county of the state.

SECTION 2. Section 40-18-14.2 of the North Dakota Century Code is created and enacted as follows:

40-18-14.2. Notice of filing.

1. At the time of filing a judgment under section 40-18-14, the municipal court judge shall order an affidavit providing the name and last known mailing address of the defendant and otherwise complying with section 28-20-15 be filed.
2. Upon the filing of the judgment and affidavit as provided in section 40-18-14, the clerk of municipal court shall mail notice of the filing of the municipal judgment to the defendant at the defendant's last known address and file proof of mailing with the district court. The notice must include the name and mailing address of the municipal court.
3. An execution of other process for enforcement of a municipal court judgment filed under this section may not be issued until ten days after the date the judgment is filed.

SECTION 3. Section 40-18-14.3 of the North Dakota Century Code is created and enacted as follows:

40-18-14.3. Stay.

If the defendant shows the district court of any county that an appeal from the judgment provided in section 40-18-14 is pending or will be taken, the court shall stay enforcement of the municipal court judgment until the appeal is concluded or the time of appeal expires.

SECTION 4. Section 40-18-14.4 of the North Dakota Century Code is created and enacted as follows:

40-18-14.4. Fees.

The municipal judge shall order a filing fee of ten dollars to be paid to the clerk of the district court.

SECTION 5. Section 40-18-14.5 of the North Dakota Century Code is created and enacted as follows:

40-18-14.5. Effect of filing.

Upon filing of a judgment under section 40-18-14 with the district court in accordance with this chapter, the judgment is enforceable only in the same manner as provided for a judgment for money in a civil action.

Approved April 12, 2021

Filed April 13, 2021

CHAPTER 305

HOUSE BILL NO. 1381

(Representatives Schauer, Hagert, B. Koppelman, K. Koppelman, Lefor, Pollert, D. Ruby, Satrom)
(Senators Dwyer, Lee, Wardner)

AN ACT to create and enact a new subsection to section 40-23-10 of the North Dakota Century Code, relating to notice requirements; to amend and reenact sections 40-22-10 and 40-23.1-08 of the North Dakota Century Code, relating to notice requirements and the engineer's report for special improvement districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-10 of the North Dakota Century Code is amended and reenacted as follows:

40-22-10. Engineer's report required - Contents.

1. After a special improvement district has been created, the governing body of a municipality, if ~~the governing body~~ deems it necessary to make any of the improvements set out in section 40-22-01 in the manner provided in this chapter, shall direct the engineer for the municipality, or some other competent engineer if the municipality does not have a competent municipal engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the improvement, including:
 - 1- a. A separate statement of the estimated cost of the work for which proposals must be advertised under section 40-22-19; and
 - 2- b. A separate statement of all other items of estimated cost not included under subsection 1 which are anticipated to be included in the cost of the improvement under sections 40-23-05 and 40-23.1-04.
2. An engineer's report under this section also must include information describing how the special assessment district was created including any considerations as to which properties are determined to receive a benefit from the proposed improvement.

SECTION 2. A new subsection to section 40-23-10 of the North Dakota Century Code is created and enacted as follows:

Any notice under this section must be published on the city's website.

SECTION 3. AMENDMENT. Section 40-23.1-08 of the North Dakota Century Code is amended and reenacted as follows:

40-23.1-08. Publication of assessment list and notice of hearing of objections to list.

The city auditor shall cause the assessment list, which ~~list shall~~may not include the amount each lot, tract, or parcel is benefited by the improvement, to be published on the municipality's website and once each week for two consecutive weeks in the official newspaper of the municipality, together with a notice of the time when and the place where the city auditor will meet to hear objections made to any assessment by any interested party or interested party's agent or attorney. In lieu of publication of an assessment list, if it includes more than five thousand lots, tracts, or parcels, the city auditor may cause it to be filed and made available for public inspection at all times after the first publication of the notice, during reasonable business hours, at such place as shall be designated in the published notice. The date set for such hearing shall be not less than fifteen days after the first publication of the notice.

Approved March 22, 2021

Filed March 23, 2021

CHAPTER 306

SENATE BILL NO. 2254

(Senators J. Roers, Burckhard, Larson)
(Representatives M. Johnson, Pyle)

AN ACT to amend and reenact subsection 1 of section 40-51.2-05 and section 40-51.2-07 of the North Dakota Century Code, relating to notice requirements for annexation and exclusion.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 40-51.2-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed at least ~~seven~~fifteen days before the presentation, by certified mail, a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last-known mailing address. The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. At the same time, the governing body of the city also shall mail, by certified mail, the notice of the time and place of consideration of the petition to the governing body of each city, county, or township directly affected by the land area petitioned to be annexed.

SECTION 2. AMENDMENT. Section 40-51.2-07 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of city.

1. The governing body of any city may adopt a resolution to annex contiguous or adjacent territory as follows:
 - a. The governing body of the city shall adopt a resolution describing the property to be annexed. Within seven days of the adoption of a resolution under this subdivision, the governing body shall mail, by certified mail, a copy of the resolution to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address.
 - b. The governing body of the city shall publish the resolution and a notice of the time and place the governing body will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper once each week for two consecutive weeks. ~~The~~At least fifteen days before the meeting, the governing body of the city shall mail at ~~least seven days before the meeting,~~ by certified mail, a notice to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that

protests must be filed in writing. The owners of any real property within the territory proposed to be annexed ~~may file written protests with the city auditor protesting against the proposed annexation within thirty days of the first publication of the resolution may file written protests with the city auditor protesting against the proposed annexation.~~ The governing body of the city also shall mail at least seven days before the meeting, by certified mail, the notice of the time and place of the hearing to the governing body of each city, county, or township directly affected by the land area proposed to be annexed. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The governing body of the city, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.

- c. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the city. When a copy of the resolution and an accurate map of the annexed area, certified by the executive officer of the city, are filed and recorded with the county recorder, the annexation becomes effective. Annexation is effective for the purpose of general taxation on and after the first day of the next January. However, the city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately before the annexation proceedings until those lands are put to another use.
2. If the owners of one-fourth or more of the territory proposed to be annexed protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1.

Approved March 17, 2021

Filed March 18, 2021