

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1165

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1165
2/4/2021

Relating to qualified electors in city elections

Chairman Dockter: 9:00. Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	A
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Voting rights for city residents
- Extraterritorial zoning residents

Rep. Kading: Introduced the bill.

Bill Wocken, ND League of Cities: In opposition, testimony #5519

Ryan Brooks, Interim City Planner for the City of Grand Forks: In opposition, testimony #5301.

Carrie Evans, Vice President of the Minot City Council: (9:17). In opposition, testimony #5357.

Brian Newby, State Election Director: Neutral, testimony #5309.

Additional written testimony:

Allyn Sveen #5266. Dustin Gawrylow #4667,4668. Steven Sprague #4906. Keith Hunke #5202. Tim Solberg #5271.

Chairman Dockter: 9:30. Closed the hearing.

Carmen Hickle, Committee Clerk

Testimony in Opposition to House Bill 1165
February 4, 2021
House Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken. I am testifying in opposition to House Bill 1165 on behalf of the North Dakota League of Cities. House Bill 1165 gives every resident of the extraterritorial area of a city exercising extraterritorial zoning authority the right to vote in every municipal election.

State law governing the manner in which extraterritorial zoning decisions are reached has changed several times over the years to give extraterritorial residents and their elected representatives more voice in extraterritorial zoning decisions. County and township representatives have been added to the statutory Planning and Zoning Commission makeup. (NDCC 40-47-06 attached) All zoning decisions are made at open public hearings but since 2009 extraterritorial zoning decisions in the outer part of the extraterritorial area are also subject to joint jurisdiction. The city and county must both agree on a zoning decision or the matter can be sent to mediation by a board consisting of both city and county elected officials along with a gubernatorial representative. The final decision, should mediation be ineffective, is made by the county commission. (NDCC 40-47-01.1) Appeals are very uncommon, but I am aware of one such situation that settled itself amicably.

In lieu of this joint jurisdiction approach existing law allows for a city and a county to divide the extraterritorial area into any configuration the two bodies can agree upon and to establish exclusive jurisdictions. This is used in a number of areas throughout the state with very few issues. With both the appeal and subdivision of the extraterritorial area options available there are many fewer zoning disputes.

Giving extraterritorial residents the ability to vote in all municipal elections is hard to justify in any event. The extraterritorial residents have no financial stake in the city yet they would be able to vote on all city issues including, Home Rule governance and fiscal matters.

For these reasons the North Dakota :League of Cities respectfully asks for a DO NOT PASS recommendation on House Bill 1165.

CHAPTER 40-47 CITY ZONING

40-47-01. Cities may zone - Application of regulations.

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section 23.1-04-04.

40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative law judge - Definition.

1. a. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
 - (1) One mile [1.61 kilometers] if the city has a population of fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.
 - (2) Two miles [3.22 kilometers] if the city has a population of five thousand or more, but fewer than twenty-five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one mile [1.61 kilometers] to two miles [3.22 kilometers] with the other political subdivision.
 - (3) Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from two miles [3.22 kilometers] to four miles [6.44 kilometers] with the other political subdivision.
- b. Any section or portion of a section of unincorporated territory within the area of joint zoning and subdivision regulation jurisdiction in which a plat or site plan has been presented before May 1, 2009, remains subject to the zoning designations and the regulations in place on May 1, 2009, unless changed as allowed under this section.
- c. The extraterritorial zoning jurisdiction and authority to receive applications and issue permits under this section may be changed by written agreement between the city and the other political subdivision.
2. Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the

- other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
3. Notwithstanding subsection 2, in any section or portion of a section of unincorporated territory in which there would otherwise be joint jurisdiction and in which a plat or site plan has been presented before May 1, 2009, the city has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits relating to zoning and subdivision regulation. In addition, under this jurisdiction the city may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision of the city made after May 1, 2009, to be final, the city shall give written notice of the decision of the governing body of the political subdivision that would otherwise have jurisdiction. The governing body may request negotiation as to any decision made by the city under the city's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the city is final. If the city and governing body of the political subdivision that would otherwise have jurisdiction do not come to an agreement as to the disputed zoning or subdivision regulation within thirty days of the request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners.
 4. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
 5. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
 6. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the

dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

7. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 6 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
 - a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
 - b. The proximity of the land in dispute to the corporate limits of each city involved;
 - c. The proximity of the land in dispute to developed property in the cities involved;
 - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
 - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
 - f. The growth pattern of the cities involved in the dispute; and
 - g. Any other factor determined to be relevant by the administrative law judge.
8. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
9. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet [30.48 meters] wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
10. For the purposes of this section, a section or a quarter quarter section is as determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.
11. As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

40-47-01.2. Agreements to not oppose annexation void.

The zoning commission or governing body may not require as a condition of approval of a request to amend or modify a zoning regulation the execution of an agreement by the owner of the property requesting the amendment or modification stating that the owner will not oppose the annexation of the property by the municipality. This section does not apply to property located within one quarter mile [.40 kilometer] of the municipality's corporate limits or to an agreement that contains a provision whereby the municipality agrees to provide a municipal service or services before the annexation. Any agreement entered in violation of this section is void.

40-47-01.3. Extraterritorial zoning - Limitation.

Notwithstanding any other provision of law, a city that exercises extraterritorial jurisdiction under this chapter may not impose building permit fees on any section of unincorporated territory which are higher than the building permit fees within the city exercising the jurisdiction.

40-47-02. Division of city into districts to carry out regulations.

The governing body may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter, and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within such districts. All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

40-47-03. Regulation for zoning made for what purposes.

The regulations provided for in this chapter shall be made in accordance with a comprehensive plan and shall be designed to:

1. Lessen congestion in the streets;
2. Provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the overcrowding of land;
6. Avoid undue concentration of population; and
7. Facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration as to the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. The comprehensive plan shall be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

40-47-04. Determining and enforcing regulations - Public hearing and notice thereof - Publication of regulations, restrictions, and boundaries.

1. The governing body of a city which uses zoning regulations shall provide for the manner in which the regulations and restrictions must be established, enforced, or supplemented, and for the manner in which the boundaries of the districts must be established and from time to time changed. A copy of each proposed regulation, restriction, or boundary must be filed with the city auditor. No regulation, restriction, or boundary may become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing must be published once a week for two successive weeks before the time set for the hearing in the official newspaper of the city. The notice must contain the following items:
 - a. The time and place of the hearing.
 - b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.
 - c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.
 - d. A statement of the times at which it will be available to the public for inspection and copying at the office of the city auditor.
2. Upon establishment of any regulation, restriction, or boundary hereunder, the governing body of a city shall file a certified copy thereof with the city auditor and shall

cause notice of the same to be published in the official newspaper of the city. The notice must describe the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available to the public for inspection and copying at the office of the city auditor.

3. The governing body of a city, a city zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

40-47-05. Amendments to or repeals of zoning regulations - Protest - Required vote for passage.

Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of streets,

the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city. The provisions of section 40-47-04 relating to public hearings, official notice, and publication of regulations, restrictions, and boundaries shall apply equally to all changes or amendments provided in this section; provided, that protests in writing must be filed with the city auditor prior to the time set for the hearing.

40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.

The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. In addition to the members appointed by the city, the zoning commission shall include at least one person residing outside of the corporate limits of a city having a population of less than five thousand, two persons residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three persons residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. Such persons shall be appointed by the board or boards of county commissioners of the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the members shall be appointed for terms of five years. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

40-47-07. Board of adjustment - Members - Term - Hear and decide appeals and review orders.

The governing body may provide for the appointment of a board of adjustment consisting of five members, each member to be appointed for a term of three years. The board of adjustment shall hear and decide appeals from and shall review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this chapter. It shall hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is

TESTIMONY ON HOUSE BILL 1165

House Political Subdivisions Committee

February 4, 2021

**Ryan Brooks, Interim City Planner
City of Grand Forks, ND**

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Ryan Brooks and I am the Interim City Planner for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express my opposition to House Bill 1165.

House Bill 1165 seeks to amend North Dakota Century Code Section 40-21-01 to provide the authority for a resident of a city's extraterritorial zoning jurisdiction (ET) to vote in municipal elections. Under current law, the city may extend its zoning jurisdiction to an area known as the extraterritorial zoning jurisdiction. The purpose stated in this statute is to promote health, safety and morals for the general welfare of the community. No other municipal authority is extended to this jurisdiction.

If adopted, the provisions of House Bill 1165 would allow a resident of the ET zoning jurisdiction to vote in any municipal election. These elections, in addition to electing members of city councils or commissions, may also include elections for the adoption or amendment to home rule charters, park district elections, municipal judge elections, municipal referrals, municipal initiated measures, and municipal recalls. In these instances, and many others, it is unlikely that any of these subject issues would relate or apply to residents of the extraterritorial zoning jurisdiction of the city. Under the proposed bill, residents of the ET zone would be allowed to vote on issues in which they may not have an inherent interest.

House Bill 1165 would also require a city to designate the ward or precinct in which the residents of the ET are to vote. Currently, no provision exists for a city to extend its wards or precincts outside of city limits. House Bill 1165 also appears to conflict with current law, which requires a qualified elector to be a resident of a municipality. In effect, this bill proposes to extend the same voting rights a qualified elector residing within the city limits has to a nonresident of the voting authority. The qualified resident elector, though, is subject to the payment of city real estate taxes, special assessments, and similar responsibilities, whereas a resident of the ET is not. The ET residents would consequently be

granted the right to vote and influence issues without bearing any responsibility for the other burdens or obligations placed upon city residents.

Additionally, the inclusion of the ET residents within a ward or precinct may create an unbalanced ward or precinct subject to challenge, in effect potentially diluting the voting rights of municipal residents. The inclusion of ET residents into a ward or precinct may also require the redrawing of municipal ward and precinct boundaries to comply with federal and state law regarding voting rights.

It can be presumed that the main argument to support the bill is to allow people residing within extraterritorial zoning jurisdictions to have influence on decisions affecting the planning and zoning of the ET. However, this argument does not take into consideration that representation on a city planning and zoning commission already includes representatives residing within the ET and outside of the city limits (NDCC 40-47-06). Thus, residents of the ET already have representation regarding planning and zoning issues affecting the ET.

ET zoning continues to provide a benefit to both the city and surrounding townships. In Grand Forks, we work diligently to build and maintain relationships with our neighboring townships to appropriately plan for future growth as well as address zoning concerns that may arise in the ET area. A recent example involves our work on developing an ordinance to assist with junk ordinances in the townships, where we will continue to collaborate to address concerns to reach a successful conclusion for all parties.

The passage of House Bill 1165 is not in the best interests of the City of Grand Forks, nor any other North Dakota political subdivision. Thank you for your time and consideration. I respectfully ask for a DO NOT PASS on House Bill 1165.

**House Political Subdivisions
Chairman – Representative Jason Dockter**

Testimony

By: Carrie Evans, Vice President, Minot City Council
Email: carrie.evans@minotnd.org
Phone: 701.660.5520

HB 1165

Good morning Chairman Dockter and members of the House Political Subdivisions Committee. My name is Carrie Evans, and I am the Vice President of the Minot City Council. I want to thank you for the opportunity today to represent the City of Minot in opposing House Bill 1165.

According to its language, this bill would provide that “every resident of a city and any resident of the extraterritorial zone jurisdiction of the city who is qualified to vote at general elections may vote at all city elections held by that city.”

We believe this bill, if passed, would contribute to the erosion of local control, which is a critical element for the success of any municipal government.

States are best served when elected state officials are empowered to make decisions in the best interests of their residents.

Counties are best served when elected county officials are entrusted with decision-making authority.

And communities like Minot are best served when local elected leaders make decisions regarding the future of their cities and their residents.

That’s why we believe HB1165 is unnecessary legislation that would complicate and hamper the efforts of cities to govern in the best interests of their residents.

No doubt we’re all familiar with the phrase “Taxation without representation.” In fact, this slogan was one of the reasons behind the creation of our great nation, when patriots of the American revolution banded together in opposition to tyranny.

Today, HB1165 amounts to “representation without taxation.”

Those who choose to live outside the City of Minot, for example, do not contribute to the city’s annual budget through property taxes. They do not contribute to the cost of fire and police protection provided by the city. Their property taxes do not support the City of Minot’s snow removal efforts or the construction of new roadways and improved infrastructure.

In addition, the property taxes paid by those who live in the two-mile ET zone do not support the Minot Park District and its efforts to create and operate recreational opportunities and attractions like the Roosevelt Park Zoo. Their property taxes also do not benefit the Minot Public School District; instead the portion of their property taxes dedicated to schools is utilized by schools outside of Minot, such as Nedrose or South Prairie.

Those who live in the two-mile extraterritorial zone have made a purposeful choice to reside outside of their respective city. They may have different reasons for choosing to live there - perhaps they simply want to avoid the confines of a large city, but still enjoy being close to a larger community to take advantage of available opportunities, whether those opportunities are economic, educational, or personal. But those choices have conditions and consequences.

Boundaries matter. In Minot, our community is home to four separate legislative districts. But residents living within the boundaries of District 40 are not permitted to vote in District 38. Residents of District 3 do not vote in District 40. And residents of District 5 do not vote in District 38.

Why? Because boundaries matter.

It is true that residents living in the two-mile zone must abide by City of Minot building and planning codes, with good reason. These zones are created in anticipation of eventually being annexed into City limits. Applying the same codes now ensures that infrastructure like roads, sewer lines, water lines, and storm sewers are properly designed and aren't at risk of needing costly replacement or repairs when they become the fiscal responsibility of City taxpayers.

The residents of the two-mile zone also have significant representation on the Minot Planning Commission; 3 of the 13 commission members are appointed by Ward County and live outside the City. That's done on purpose to ensure that residents in the two-mile zone have a voice in code issues that affect them.

That is clearly not the case with HB1165. If this legislation is approved, residents living outside the City of Minot, for example, would have the same voting privileges as Minot residents on City Council elections, Minot Public School board elections and bond issues, and Minot Park Board issues, despite not contributing one dollar of property tax to support these entities.

Let's think about this issue in reverse: Should Minot residents vote in Nedrose school board elections, or on a South Prairie school bond issue? No, because residents living within Minot do not support these districts through property tax funding or by living within those districts; therefore they have not earned a voice through the ballot box, either.

Local control must be maintained at all levels. HB1165 would erode that control.

I appreciate the opportunity to appear before you today to discuss why we believe this legislation would be detrimental to communities across North Dakota. As Vice President of the Minot City Council and a representative of the City of Minot, I urge you to give HB1165 a "Do Not Pass" recommendation.

Thank you.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 4, 2021

TO: Chairman Dockter and Members of the House Political Subdivision Committee

FR: Brian D. Newby, State Elections Director on behalf of Secretary of State Al Jaeger

RE: HB 1165 – Qualified Electors in City Elections

Currently, NDCC § 40-21-01 does not address voting for residents of extraterritorial zoning jurisdictions.

With HB 1165, allowing such persons to vote in city elections is a policy decision in front of this legislative committee. The Secretary of State's testimony seeks only to raise operational items for awareness, while this policy is being considered, in order to ensure all eligible voters are included and receive their appropriate ballot in such elections.

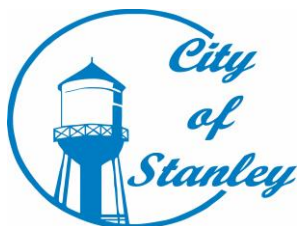
As background, North Dakota's Central Voter File ties each person to a county and other jurisdictions based upon a voter's residential street address. The importance of a voter receiving the correct ballot is the foundation of our government, ensuring that the proper people vote for their representatives and issues. Thus, voters are placed in precincts for the purpose of assigning ballots and reporting results.

Jurisdictions layer upon each other. For instance, a school district may cross two cities and several precincts. This sometimes causes split-precincts, where voters are further assigned to specific ballot styles. Each time a jurisdiction layer is added, the complexity of an election increases, resulting in more ballot styles. This creates additional set-up, programming, and proof-reading requirements upon the county auditors who locally run elections.

Likely, these layers can be determined today because extraterritorial zoning jurisdictions have been defined. However, because the mileage requirements for the size of the extraterritorial zoning jurisdictions are tied to population, and with the 2020 census results forthcoming later this year, these new census numbers may impact these jurisdictions. It could be prudent to delay implementation of this potential policy change until after the census results are known. That way, this process can be refined over several years, before the next census.

Another potential consideration, in association with election deadlines, would be the timing of ordinances that create or expand these zoning jurisdictions. Inclusion of a new zoning jurisdiction, as mentioned, would have downstream impacts on creation of ballots, and should be prohibited from occurring within a certain timeframe—perhaps 120 days—before an election,

Managing jurisdictional boundaries for the purposes of developing ballots is relatively routine, but on behalf of the Secretary of State and his election team, I encourage the committee to consider the practicality of the operational impacts when evaluating this policy. While the considerations here are by no means exhaustive of all potential implementation issues, addressing these mentioned up-front in the legislation likely will minimize potential operational impacts should these policy changes be adopted.


Allyn Sveen – Stanley City Auditor

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February 1, 2021

House Political Subdivisions

HB #1165 - (2/4/2021 Hearing – 9:00 A.M.)

Dear Chair Dockter and Honorable Members of the House Political Subdivisions Committee:

I am respectfully requesting you to support a **“DO NOT PASS”** on House Bill #1165 relating to qualified electors in city elections.

This bill presents a lot of controversy. Members of the extraterritorial zoning area do not pay city taxes, most township levies are at 18.00 mills and nearly all cities at a mill levy that far exceeds the township levy. Residents of the extraterritorial zoning should not be part of the voting process if they are exempted from paying city taxes and special assessments.

Does the resident of the extraterritorial zoning get to arbitrarily decide whether they vote in the city or the township election each year or do all residents within this zoning jurisdiction vote as city residents? This process seems unmanageable. If an extraterritorial resident is a qualified elector in a city election does that make them eligible to run for city council or other elected position, this certainly does not seem fair?

Residents in extraterritorial zoning could potentially be part of two different legislative or county commissioner districts; does this make them a qualified resident of such commissioner or legislative district and able to run for office? These districts are established off population; this would distort population counts within county commissioner and legislative districts. Further, how does this affect State funding that is based off census counts that is allocated to political subdivisions?

Again, your support for a **“DO NOT PASS”** on HB #1165 is greatly appreciated. The bill is unfair, presents too many unanswered questions and appears to be unmanageable.

Sincerely,
Allyn Sveen
Stanley City Auditor

E-mail: District #2 & #4 House Representatives

bertanderson@nd.gov
dlongmuir@nd.gov
cfegley@nd.gov
tbjones@nd.gov

HB 1165 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network

Extraterritorial Zoning has long been a hot topic every legislative session. The issue of Regulation Without Representation is the core problem. Ideally, local cities and counties would hash out these problems. But that does not seem to happen.

This session, we have decided to support efforts to simply grant those residents affected by this system the ability to vote in elections where the jurisdiction has ETA power.

Because it is the state that gives cities the ability to use this authority, it is also the state that is responsible for problems it creates on the people who have no say and no vote in said city.

Citizen Opinion: End The Practice of Regulation Without Representation

ND Watchdog Network <dgawrylow@watchingnd.com>
To: Dustin Gawrylow <dgawrylow@gmail.com>

Thu, Jan 19, 2017 at 12:03 PM

Like Tweet in



**Citizen Opinion by Kay LaCoe,
Resident of Burleigh County and
Subject of the City of Lincoln's
Unchecked Regulatory Power
Outside Its City Limits**

January 19th, 2017

Dear North Dakota Legislators and Citizens,

I urge the legislature to approve HB 1258 as it relates to the extraterritorial zoning and subdivision authority so that people like myself are no longer regulated by elected officials we have no ability to vote for or run against.

To the Citizens of North Dakota: As one private citizen to others, please help me fight Regulations without Representation, you may not know when and how it will affect you in the future:

House Bill 1258 will be heard Friday January 20th @ 11 am in the House Political Subdivisions Committee. This bill ends Regulation without Representation by cities on people who live outside of the city limits but subject to city zoning laws and other regulation. People in these zones have no right, currently, to vote for the people in city government that are regulating them. This bill tells cities to either annex the territory and promote Urban Sprawl or give back regulatory authority to the county. People in this zone do vote for county officials. [Click here to contact members of the committee.](#)

Or copy & paste this list into your email:

lklein@nd.gov, phatlestad@nd.gov, tbeadle@nd.gov, rsbecker@nd.gov,
sertelt@nd.gov, rguggisberg@nd.gov, krhanson@nd.gov,
marycjohnson@nd.gov, kkoppelman@nd.gov, dlongmuir@nd.gov,
agmaragos@nd.gov, bpyle@nd.gov, lsimons@nd.gov, nptoman@nd.gov,
dzubke@nd.gov

Our Story:

Twenty years ago, I moved with my parents out of town to enjoy country living on a 52-acre agriculturally zoned tract of land where we could raise horses and cattle and maybe an occasional few rows of corn for the wildlife.

Twelve years ago, my husband and I picked the perfect piece of rural residential property just one mile from my parents' acreage to live and raise a family and a couple of horses.

We didn't move, as some have accused, "so we could have the conveniences of city living without having to pay our share of it". We didn't move, as some have accused, into a "swanky, rich subdivision".

We moved long before the city, we are now controlled by, eyed our properties to overtake.

We moved where, before the laws changed, we were far outside of the ETA. It was perfect, until the amount of land in the ETA was doubled by the

legislature. It was perfect until we were transferred out of one city's ETA and into another's without any say or choice.

It was perfect until we were stripped of our right to regulation WITH representation. We knew and planned to live many, years before the ETA expanded, outside the ETA jurisdiction of both of the cities that were near us.

To Legislators And My Local Government Leaders:

One of the biggest injustices brought about by the legislature's implementation and then expansion of the ETA was its detriment to residents that already lived where the ETAs showed up.

The ETA, if it has to exist, should have only applied to residents that had a choice of where they moved to after the fact, not on those who didn't have and still do not have a choice. As a result, city government creates, alters or imposes planning and zoning ordinances that directly impact the lives and livelihoods of ETA residents and we have absolutely no representation, recourse or reprieve.

A city's planning for ETA areas should not happen at the cost and detriment of the very people who will be directly impacted by their decisions but have no voice.

I would propose one thing as it relates to this bill and its passing. I would propose that the burden of future use and zoning planning should rest on the shoulders of those we are able to elect to make such decisions.

It not an illogical parallel to expect city and county government to work together, after all they are not mutually exclusive and one supports the other in many ways.

I urge you LET ME VOTE for the people who make decisions over my property and my life!

Please end regulation without representation and let ME have a say in who sets the rules on my life.

Please pass HB 1258 out of committee with a DO PASS recommendation.

Respectfully submitted,

Kay LaCoe, Regulated by the City of Lincoln but not a resident of Lincoln__

Watchdog Legislative Alert: Property Tax Reform and More

As of January 19th, 2017

The following bills will be heard in committee in the coming days, [please contact your legislators](#) and the committee members (addresses below) and ask them to support these reforms:

Property Tax Reform

House Bill 1326 has yet to be heard or scheduled (we will keep you up to date. It puts Schools, Counties, and Parks in charge of their tax revenue, and removes the ability from Cities to be able to exempt property from taxation without the approval of local school district, the county, and the local park board. This is Local Government Empowerment.

Or copy & paste this list into your email:

cheadland@nd.gov, jddockter@nd.gov, sertelt@nd.gov,
jgrueneich@nd.gov, phatlestad@nd.gov, khogan@nd.gov,
mchowe@nd.gov, bkoppelman@nd.gov, amitskog@nd.gov,
cdolson@nd.gov, rschobinger@nd.gov, vsteiner@nd.gov,
nptoman@nd.gov, wtrottier@nd.gov,

...

Senate Bill 2166 was heard today in the Senate Finance and Tax Committee. This bill simply says that properties in Tax Increment Finance District cannot also be in the Renaissance Zone Program, and visa versa. [Click here to contact the members of the committee directly.](#)

Or copy & paste this list into your email:

dcook@nd.gov, bbekkedahl@nd.gov, jdotzenrod@nd.gov,
llaffen@nd.gov, scottmeyer@nd.gov, jkunruh@nd.gov,

Senate Bill 2055 was heard earlier this month in the Senate Political Subdivisions Committee. This bill addresses the controversy in Bismarck in 2016 that erupted when the Mayor of Bismarck convinced the N.D. Department of Commerce to bend the rules and get around a rejection of the Renaissance Zone program by the Burleigh County Commission. ([See history here.](#)) SB 2055 fixes this problem and requires that both County and School District approval for this program - taking away the Commerce Department's ability to over-ride elected government decisions. [Click here to contact the committee directly.](#)

Or copy & paste this list into your email:

raburckhard@nd.gov, hcanderson@nd.gov, jdotzenrod@nd.gov,
jkannianen@nd.gov, dklarson@nd.gov, jlee@nd.gov

...

House Bill 1244 will be heard on Friday, January 20th @ 10am in the House Energy and Natural Resources Committee. This bill requires a County Board of Commissioners (elected) to approve the use of eminent

domain by Water Resource Boards (unelected). [Click here to contact the committee to show your support.](#)

Or copy & paste this list into your email:

tkporter@nd.gov, cdamschen@nd.gov, dickanderson@nd.gov,
gdbosch@nd.gov, bdevlin@nd.gov, pdheinert@nd.gov, gkeiser@nd.gov,
mlefor@nd.gov, amarschall@nd.gov, amitskog@nd.gov, crmack@nd.gov,
sroersjones@nd.gov, mruby@nd.gov, jayseibel@nd.gov

Dustin Gawrylow, Managing Director

North Dakota Watchdog Network

Donate Today!

Contact Your Legislators In Your District

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Testimony Presented on HB 1165 to the

Political Subdivision Committee

Representative Jason Dockter, Chair

By

Steven Sprague, City Auditor

City of Fargo

February 2, 2021

This statement expresses the opposition of the Fargo City Commission to House Bill 1165 relating to qualified electors in city elections.

North Dakota Century Code 16.1-01-04 establishes the Qualifications of electors, namely

1. To qualify as an elector of this state, an individual must be:
 - a. A citizen of the United States
 - b. Eighteen year or older; and
 - c. ***A resident of this state who has resided in the precinct at least thirty days immediately preceding any election.***
2. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33
3. A qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.
4. An elector seeking to vote in an election must meet the identification requirements specified in section 16.1-01-04.1

I feel confident the State would not allow someone who is not a resident of the State of North Dakota to vote in a North Dakota election. Voting rights are reserved for citizens in the City, County or State in which they reside. Voting rights are not intended for people **not** living in the City, County or State in which they hope to vote.

That being said HB 1165 extends voting rights to citizens who do not reside in the City and should be **OPPOSED**.

For the reasons expressed, the City of Fargo respectfully requests a **DO NOT PASS** recommendation on HB1165.

Thank you for the important work you do for the State of North Dakota and for the opportunity to testify on this matter.

House of Representatives Political Subdivisions Committee

Representative Jason Dockter, Chairman

Representative Brandy Pyle, Vice-Chairman

February 4, 2021

Chairman Dockter, Members of the House Political Subdivisions Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony on behalf of the City of Bismarck in opposition of House Bill 1165.

The Bismarck City Commission voted 4-1 at its January 26, 2021 City Commission meeting to oppose HB 1165.

Concern was expressed about extending voting rights to persons residing outside of Bismarck's corporate limits that would allowed them to vote on City matters that have no direct nexus to their residency in the extra territorial zoning district of the city. City budget issues, tax ordinances, and referral and initiation of ordinances are powers reserved for the citizens of Bismarck as defined in Bismarck's Home Rule Charter. Extra territorial residents do not pay city property taxes but by voting would have the ability to increase City taxes on our residents. There are also equal protection concerns about taxation on city residents without equal voting rights. The only City item the extra territorial residents are subject to is zoning. There is a County Commissioner and two ETA residents who do have representation on the Bismarck Planning and Zoning Board.

On behalf of the City of Bismarck, I urge you to give HB 1165 a DO NOT PASS recommendation.

Thank you for the opportunity to provide written testimony in opposition of House Bill 1165.

Keith J. Hunke, City Administrator
City of Bismarck
701-355-1300
khunke@bismarcknd.gov



Testimony on HB 1165
Presented to the House Political Subdivisions Committee
Prepared by Tim Solberg, West Fargo Planning Director
Thursday, Feb. 4, 2021

1 Representative Dockter and members of the House Political Subdivision
2 Committee: I write you today to express my opposition to HB 1165, which would allow
3 any qualified elector who is resident of the extraterritorial zoning jurisdiction of the city
4 to vote in city elections.

5 Extraterritorial zoning applies to the orderly growth of the community and allows
6 for a coordinated response to growth pressures outside city limits. This provides a benefit
7 to the rural areas in ensuring growth is orderly and does not negatively affect them. This
8 authority only applies to subdivisions and zoning, which includes building permits and
9 floodplain development. It does not include nuisance laws, road authority or municipal
10 service responsibilities, nor does it allow cities to tax residents in these areas. With this bill,
11 residents with a limited relationship and no tax responsibility to the city would be able to
12 vote in the city's election.

13 The extraterritorial zoning strategy, as currently written, has been incredibly
14 helpful in the City of West Fargo's phenomenal growth in the last 20 years. This growth
15 has required much forethought to the layout of streets, development of compatible
16 uses and administration of floodplain regulations in flood prone areas. Under these
17 statutes, the City of West Fargo has successfully coordinated with Cass County and
18 Reed, Raymond, Mapleton and Warren townships.

19 A key part of this relationship is ensuring extraterritorial residents receive
20 opportunities to provide input on these decisions. The City of West Fargo Planning
21 Commission has eight members and three of those members are from extraterritorial
22 areas and appointed by the Cass County Board of Commissioners. In West Fargo, all
23 extraterritorial area applications go to Cass County and affected townships for review.

24 Any comments and recommendations from these partners receive strong
25 consideration.

26 The extraterritorial area statutes have been in place since 1975 and work. Under
27 these statutes, much coordination has taken place with townships, Cass County, and
28 neighboring cities to ensure that as growth occurs, we plan and accommodate
29 improvements and compatibility of uses. The spirit and goals of working together for
30 coordinated growth of our cities and protecting the rights of rural residents is happening
31 through the coordination required in the current law.

32 For these reasons, we urge a DO NOT PASS recommendation on HB 1165. I am
33 available for any questions you may have on this matter at
34 tim.solberg@westfargond.gov.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1165
2/5/2021

Relating to qualified electors in city elections
--

Chairman Dockter: (11:09). Opens for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	p

Discussion Topics:

- Vote in precinct

Rep. Adams: Made a do not pass motion.

Rep. Hatlestad: Second the motion.

Representatives	Vote
Representative Jason Dockter	N
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y

Representative Dave Nehring	N
Representative Marvin E. Nelson	N
Representative Luke Simons	N
Representative Nathan Toman	N

7-7-0 failed

Rep. Klemin: Made a motion to send to the floor without committee recommendation.

Rep. Adams: Second the motion

Representatives	Vote
Representative Jason Dockter	N
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	N
Representative Marvin E. Nelson	N
Representative Luke Simons	N
Representative Nathan Toman	N

7-7-0 failed

Rep. Ertelt: Will work on an amendment.

Chairman Dockter: (11:40). Closed committee work.

Carmen Hickle, Committee Clerk

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1165
2/11/2021

Relating to qualified electors in city elections
--

Chairman Dockter: (5:42). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Voting rights for city residents

Bill Wocken: Explained extraterritorial zoning change process. Testimony #6471.

Rep. Ertelt: Presented proposed amendment 21.0416.01003. Made a motion to approve the amendment. Amendment testimony #6470.

Rep. Johnson: Second the motion.

Rep. Ertelt: Rescind his motion.

Rep. Johnson: Rescind her second.

Chairman Dockter: (5:57). Closed committee work.

Carmen Hickle, Committee Clerk

EXTRATERRITORIAL ZONING Change Process 6471

ZONING Change
INITIATED BY OWNER

ZONING Change
INITIATED BY CITY

ZONING Change
REQUEST

PLANNING COMMISSION
CONSIDERATION

MEMBERSHIP
Up to 10 city members
Up to 3 ETA members
(SEE CHART)

NOTICE OF HEARING
1/week for 2 weeks

PLANNING COMMISSION
PUBLIC HEARING

RECOMMENDATION

Outer Half of ETA (Joint Jurisdiction)

Inside City or INNER HALF
of ETA

County/Township
Process + Hearings

CITY GOVERNING BODY
CONSIDERATION

County/Township
DECISION

NOTICE HEAR.
1/week - 2 weeks

NOTICE TO CITY

CITY GOVERNING BODY
PUBLIC HEARING

CITY AGREE

CITY NOT AGREE

DECISION IS
FINAL 30 days

IF
AGREE
IF
AGREE

NEGOTIATION 30 days

MEDIATION

County Commission
FINAL DECISION

FINAL ACTION

PLANNING COMMISSION MEMBERSHIP

<u>City Population</u>	<u>Maximum ETA AREA</u>	<u>PLANNING COMMISSIONERS</u>
0 - 4999	1 mile	1 member
5,000 - 24,999	2 miles	2 members
25,000 or more	3 miles	3 members

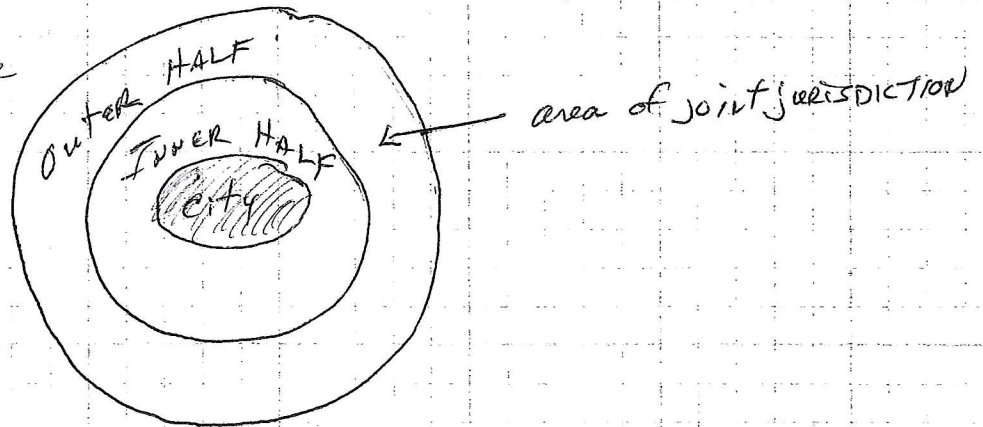
* must RESIDE in ETA area
Appointed by the County
Commission

Vote on all matters

Formula ETA JURISDICTIONS

NDCC 40-47-01.1 (1)
Subsection A

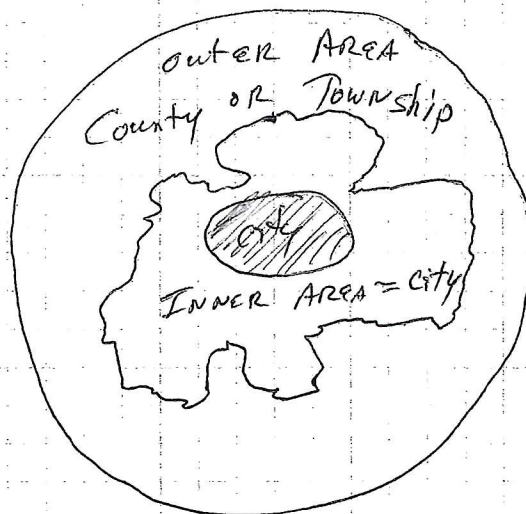
Somewhat cumbersome
Not widely used



NEGOTIATED ETA JURISDICTIONS

NDCC 40-47-01.1 (1)
Subsection C

Used frequently



Set by mutual Agreement
Able to be re-negotiated
No area of joint jurisdiction

AREAS may be Affected by
Topography
Rivers + Streams
Flood plains
Roads
Utilities
Growth directions

21.0416.01003
Title.

Prepared by the Legislative Council staff for
Representative Ertelt
February 9, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1165

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 40-47-06 and 40-48-03 of the North Dakota Century Code, relating to members of the planning and zoning commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-06 of the North Dakota Century Code is amended and reenacted as follows:

40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.

1. The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. In addition to the members appointed by the city, the zoning commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the county or counties within which such the zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission.
2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the ~~appointed~~members shall~~must~~ be appointed for terms of five years and the elected member shall serve a term of four years. ~~Such~~The commission shall make a preliminary report and hold public hearings ~~thereon~~on the report before submitting its final report. The governing body ~~shall~~may not hold its public hearings or take action until it has received the final report of the zoning commission. ~~If a city has a planning commission, it may be appointed as the zoning commission.~~

SECTION 2. AMENDMENT. Section 40-48-03 of the North Dakota Century Code is amended and reenacted as follows:

40-48-03. Planning commission - Creation - Members - Ex officio members.

1. The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. In addition to the members appointed by the city, the planning commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the county or counties within which such~~the~~ subdivision authority is to be exercised ~~and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission.~~
2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the appointed members ~~shall~~must be appointed for terms of five years and the elected members shall serve a term of four years. The executive officer, the engineer, and the attorney of the city shall ~~bear~~be ex officio members of the commission."

Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1165
2/18/2021

Relating to qualified electors in city elections

Chairman Dockter: (9:38). Opened for committee work.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	A
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	A
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Zoning commission
- Planning commission

Rep. Ertelt: Explained the Christmas Tree version of the bill and proposed amendment 21.0416.01005. Made a do pass motion on the amendment. Testimony #6921.

Rep. Simons: Second the motion.

Representatives	Vote
Representative Jason Dockter	N
Representative Brandy Pyle	N
Representative Mary Adams	N
Representative Claire Cory	A
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	N
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	N

Representative Donald Longmuir	N
Representative Dave Nehring	N
Representative Marvin E. Nelson	A
Representative Luke Simons	Y
Representative Nathan Toman	Y

Roll call vote on amendment 5-7-2 Failed.

Rep. Adams: Made a do not pass motion.

Vice Chairman Pyle: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	A
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	N
Representative Marvin E. Nelson	A
Representative Luke Simons	N
Representative Nathan Toman	N

7-5-2 carried.

Vice Chairman Pyle: Will carry the bill.

Chairman Dockter: (9:15). Closed the committee work.

Carmen Hickle, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1165

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 40-47-06 and 40-48-03 of the North Dakota Century Code, relating to members of the planning and zoning commissions.

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2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the appointed members shall~~must~~ be appointed for terms of five years and the elected member shall serve a term of four

~~years. Such~~The commission shall make a preliminary report and hold public hearings ~~thereon on the report~~ before submitting its final report. The governing body ~~shall~~may not hold its public hearings or take action until it has received the final report of the zoning commission. ~~If a city has a planning commission, it may be appointed as the zoning commission.~~

SECTION 2. AMENDMENT. Section 40-48-03 of the North Dakota Century Code is amended and reenacted as follows:

40-48-03. Planning commission - Creation - Members - Ex officio members.

1. The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. In addition to the members appointed by the city, the planning commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must reside within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 and must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the ~~county or counties within which such subdivision authority is to be exercised and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission~~territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1. If a vacancy of a member residing outside the corporate limits exists, the board or boards of county commissioners shall appoint an individual residing outside the corporate limits but within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 to serve on the planning commission until the position may be filled in the next general election.
2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the ~~appointed members shall~~must be appointed for terms of five years ~~and the elected members shall serve a term of four years~~. The executive officer, the engineer, and the attorney of the city ~~shall~~beare ex officio members of the commission."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1165: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1165 was placed on the Eleventh order on the calendar.

21.0416.01005
Title.

Prepared by the Legislative Council staff for
Representative Ertelt
February 16, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1165

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 40-47-06 and 40-48-03 of the North Dakota Century Code, relating to members of the planning and zoning commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-06 of the North Dakota Century Code is amended and reenacted as follows:

40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.

1. The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. In addition to the members appointed by the city, the zoning commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must reside within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 and must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commission~~territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1. If a vacancy of a member residing outside the corporate limits exists, the board or boards of county commissioners shall appoint an individual residing outside the corporate limits but within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 to serve on the zoning commission until the position may be filled in the next general election.~~
2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the appointed members shall~~must~~ be appointed for terms of five years and the elected member shall serve a term of four

~~years. Such~~The commission shall make a preliminary report and hold public hearings ~~thereon on the report~~ before submitting its final report. The governing body ~~shall~~may not hold its public hearings or take action until it has received the final report of the zoning commission. ~~If a city has a planning commission, it may be appointed as the zoning commission.~~

SECTION 2. AMENDMENT. Section 40-48-03 of the North Dakota Century Code is amended and reenacted as follows:

40-48-03. Planning commission - Creation - Members - Ex officio members.

1. The governing body of any city may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the city with the approval of its governing body. In addition to the members appointed by the city, the planning commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must reside within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 and must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the ~~county or counties within which such subdivision authority is to be exercised and shall reside within the territorial limits of the subdivision regulation authority exercised by the city, if such persons are available and will serve on the planning commission~~territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1. If a vacancy of a member residing outside the corporate limits exists, the board or boards of county commissioners shall appoint an individual residing outside the corporate limits but within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 to serve on the planning commission until the position may be filled in the next general election.
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Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1165

Introduced by

Representatives Kading, Bellew, Heinert

Senator Kannianen

1 A BILL ~~for an Act to amend and reenact section 40-21-01 of the North Dakota Century Code,~~
2 ~~relating to qualified electors in city elections.~~ for an Act to amend and reenact sections 40-47-06
3 and 40-48-03 of the North Dakota Century Code, relating to members of the planning and
4 zoning commissions.

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

6 ~~— SECTION 1. AMENDMENT. Section 40-21-01 of the North Dakota Century Code is~~
7 ~~amended and reenacted as follows:~~

8 ~~— 40-21-01. Qualified electors in municipality election - Restrictions.~~

9 ~~— 1. Every resident of a municipality and any resident of the extraterritorial zoning~~
10 ~~jurisdiction of the city who is qualified to vote therein at general elections may vote at~~
11 ~~all municipality elections held therein. When by that city.~~

12 ~~— 2. Except as provided in subsection 3, when elections are held by wards or precincts, a~~
13 ~~personan individual may not vote in any place other than the ward or precinct of which~~
14 ~~the personindividual is a resident.~~

15 ~~— 3. An individual who is a resident of the extraterritorial zoning jurisdiction of the city is~~
16 ~~entitled to vote in the ward or precinct to which that area of the jurisdiction has been~~
17 ~~designated to vote by the governing body of the city.~~

18 **SECTION 1. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **40-47-06. Zoning commission - Appointment - Duties - Preliminary and final report.**

21 1. The governing body of a city desiring to avail itself of the powers conferred by this
22 chapter shall appoint a commission, to be known as the zoning commission, to
23 recommend the boundaries of the various original districts and appropriate regulations
24 to be enforced therein. In addition to the members appointed by the city, the zoning

commission ~~shall~~must include at least one ~~person~~member residing outside of the corporate limits of a city having a population of less than five thousand, two ~~persons~~members residing outside the corporate limits of a city having a population of five thousand or more, but less than twenty-five thousand, or three ~~persons~~members residing outside the corporate limits of a city having a population of twenty-five thousand or more if zoning authority is exercised pursuant to section 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county commissioners of~~The members residing outside the corporate limits must reside within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 and must be chosen at a general election by the qualified electors residing outside the corporate limits of the city but within the county or counties within which such zoning authority is to be exercised and shall reside within the territorial limits of the zoning regulation authority exercised by the city, if such persons are available and will serve on the zoning commissionterritorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1. If a vacancy of a member residing outside the corporate limits exists, the board or boards of county commissioners shall appoint an individual residing outside the corporate limits but within the territorial limits of the zoning regulation authority exercised by the city pursuant to section 40-47-01.1 to serve on the zoning commission until the position may be filled in the next general election.

2. Of the members of the commission appointed by a board or boards of county commissioners pursuant to this section, the first member appointed shall hold office for five years, the second member appointed shall hold office for three years, and the third member appointed shall hold office for one year. Thereafter, the appointed members ~~shall~~must be appointed for terms of five years and the elected member shall serve a term of four years. ~~Such~~The commission shall make a preliminary report and hold public hearings ~~thereon~~on the report before submitting its final report. The governing body ~~shall~~may not hold its public hearings or take action until it has received the final report of the zoning commission. ~~If a city has a planning commission, it may be appointed as the zoning commission.~~

1 **SECTION 2. AMENDMENT.** Section 40-48-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **40-48-03. Planning commission - Creation - Members - Ex officio members.**

4 1. The governing body of any city may create, by ordinance, a planning commission to
5 consist of not more than ten members to be appointed by the executive officer of the
6 city with the approval of its governing body. In addition to the members appointed by
7 the city, the planning commission ~~shall~~must include at least one ~~person~~member
8 residing outside of the corporate limits of a city having a population of less than five
9 thousand, two ~~persons~~members residing outside the corporate limits of a city having a
10 population of five thousand or more, but less than twenty-five thousand, or three
11 ~~persons~~members residing outside the corporate limits of a city having a population of
12 twenty-five thousand or more if zoning authority is exercised pursuant to section
13 40-47-01.1. ~~Such persons shall be appointed by the board or boards of county~~
14 ~~commissioners of~~The members residing outside the corporate limits must reside within
15 the territorial limits of the zoning regulation authority exercised by the city pursuant to
16 section 40-47-01.1 and must be chosen at a general election by the qualified electors
17 residing outside the corporate limits of the city but within the county or counties within
18 ~~which such subdivision authority is to be exercised and shall reside within the territorial~~
19 ~~limits of the subdivision regulation authority exercised by the city, if such persons are~~
20 ~~available and will serve on the planning commission~~territorial limits of the zoning
21 regulation authority exercised by the city pursuant to section 40-47-01.1. If a vacancy
22 of a member residing outside the corporate limits exists, the board or boards of county
23 commissioners shall appoint an individual residing outside the corporate limits but
24 within the territorial limits of the zoning regulation authority exercised by the city
25 pursuant to section 40-47-01.1 to serve on the planning commission until the position
26 may be filled in the next general election.

27 2. Of the members of the commission appointed by a board or boards of county
28 commissioners pursuant to this section, the first member appointed shall hold office for
29 five years, the second member appointed shall hold office for three years, and the
30 third member appointed shall hold office for one year. Thereafter, the appointed
31 members ~~shall~~must be appointed for terms of five years and the elected members

2021 SENATE POLITICAL SUBDIVISIONS

HB 1165

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

HB 1165
3/18/2021

A BILL for an Act to amend and reenact section 40-21-01 of the North Dakota Century Code, relating to qualified electors in city elections.

Chairman Burckhard opened the hearing on HB 1165 at 11:02 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Extraterritorial zoning jurisdictions
- Special assessments
- Joint jurisdiction expansion
- Property tax
- Census delay

[11:04] Representative Tom Kading, District 45. Introduced HB 1165.

[11:18] Bill Wocken, ND League of Cities. Provided testimony #9946, #10055 in opposition.

[11:30] Shaun Sipma, Mayor, Minot. Provided testimony #9907 in opposition.

[11:37] Rachelle Laqua, Principal Planner, City of Williston Planning and Zoning Department. Provided testimony #9814 in opposition.

[11:42] Steve Bakken, Mayor, Bismarck. Provided testimony #9911 in opposition.

[11:50] Linda Svihovec, introduced Donnell Preskey On Behalf of Donnell Preskey, ND Association of Counties. Provided testimony #10058 in opposition.

[11:53] Brian Newby, State Elections Director, On Behalf of Secretary of State Al Jaeger. Provided neutral testimony #9846.

Additional written testimony:

Steven Sprague #9496
Dwaine Heinrich #9616
Diane Affeldt #9629
Allyn Sveen #9716
Keith Hunke #9869
Jim Neubauer #9908
Bernie Dardis #9922

Chairman Burckhard closed the hearing on HB 1165 at 11:57 a.m.

Patricia Lahr, Committee Clerk

Testimony in Opposition to House Bill 1165
March 18, 2021
Senate Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken. I am testifying in opposition to House Bill 1165 on behalf of the North Dakota League of Cities. House Bill 1165 gives every resident of the extraterritorial area of a city exercising extraterritorial zoning authority the right to vote in every municipal election.

State law governing the manner in which extraterritorial zoning decisions are reached has changed several times over the years to give extraterritorial residents and their elected representatives more voice in extraterritorial zoning decisions. County and township representatives have been added to the statutory Planning and Zoning Commission makeup. (NDCC 40-47-06 attached) All zoning decisions are made at open public hearings, but since 2009 extraterritorial zoning decisions in the outer part of the extraterritorial area are also subject to the process of joint jurisdiction. In joint jurisdiction the city and county must both agree on a zoning decision or the matter can be sent to mediation by a board consisting of both city and county elected officials along with a gubernatorial representative. The final decision, should mediation be ineffective, is made by the county commission. (NDCC 40-47-01.1 attached) Appeals are very uncommon. I am aware of one such situation that settled itself amicably.

In lieu of this joint jurisdiction approach, existing law encourages a city and a county to divide the extraterritorial area into any configuration the two bodies can agree upon and to establish exclusive jurisdictions. This is used in most areas of the state with which I am aware and with very few issues. With both the appeal and division of the extraterritorial area options available there are many fewer zoning disputes than in the past. I have attached to my testimony two visual aids to identify the extraterritorial zoning process options available under existing state law. They are not polished but

hopefully they make the provisions of Chapter 40-47 of the Century Code more easily understood. I was fortunate to attend numerous conference committee meetings at the end of the 61st Legislative Assembly as these most recent extraterritorial zoning regulations were being drafted. The committee's overriding concern was to insure the extraterritorial residents had input into the zoning decisions in their back yard.

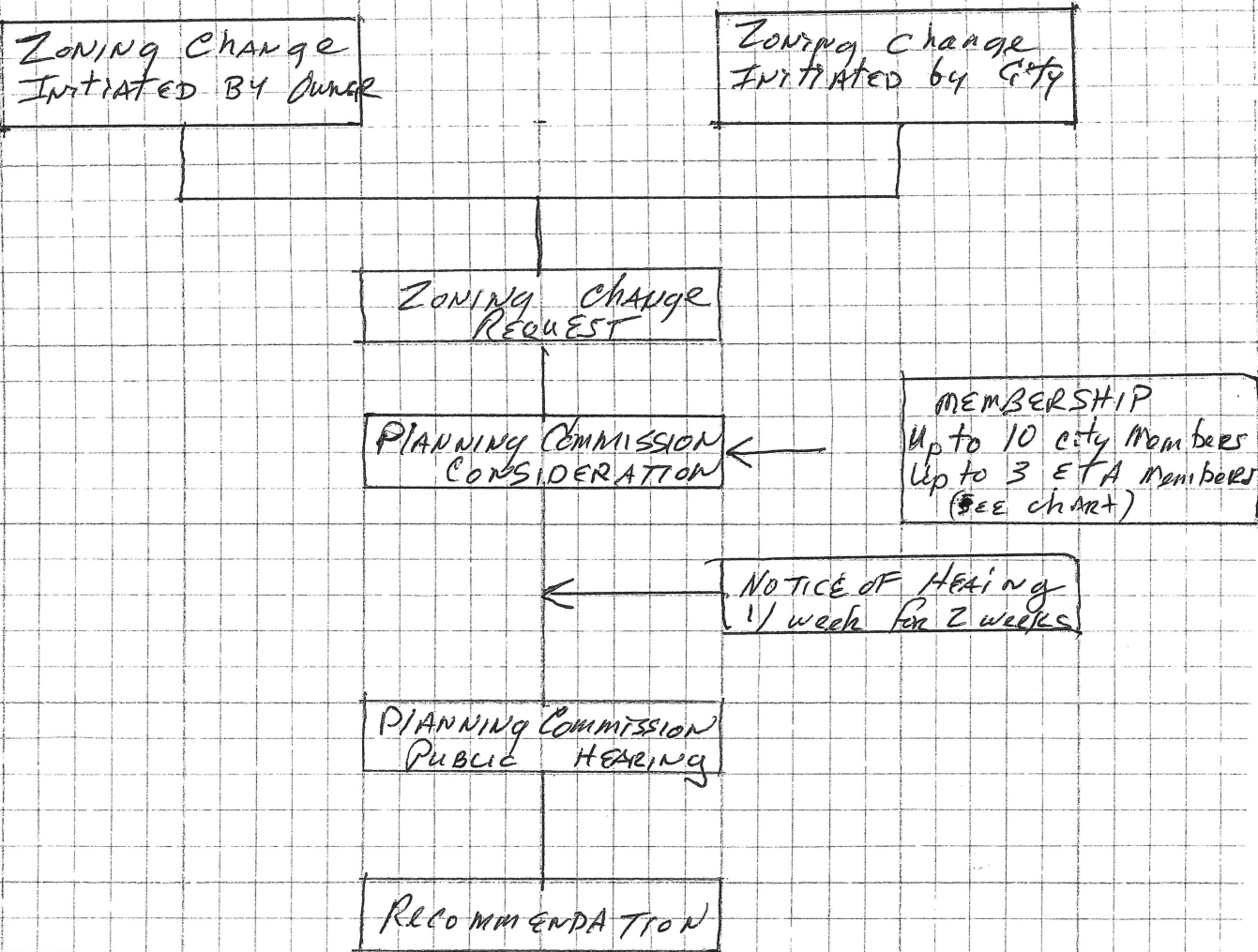
As I listen to those who are troubled by this statute I often hear the concern that zoning decisions in the extraterritorial area, outside the city limits, are being made by the city. The flowchart I have provided shows that the County Commission has the final say in zoning decisions in the outer half of the extraterritorial zone. What I do not hear often anymore are recent examples of zoning decisions that disadvantage residents. Many of the examples given pre-date the most recent changes instituting the rule of joint jurisdiction. Indeed, in the outer portion of the extraterritorial area most of the decisions are whether or not a residential zoning change should be granted. Often the existing residential units argue about whether or not additional units like their own should be allowed. This decision is up to the County Commission in the end, not the city governing body.

Giving extraterritorial residents the ability to vote in all municipal elections is hard to justify in any event. The extraterritorial residents have no financial stake in the city yet they would be able to vote on all city issues including, Home Rule governance and fiscal matters. This is an unprecedented ability granted to one group of voters to impose taxes on another group of voters without being subject to those same taxes.

For these reasons the North Dakota League of Cities respectfully asks for a Do Not Pass recommendation on House Bill 1165.

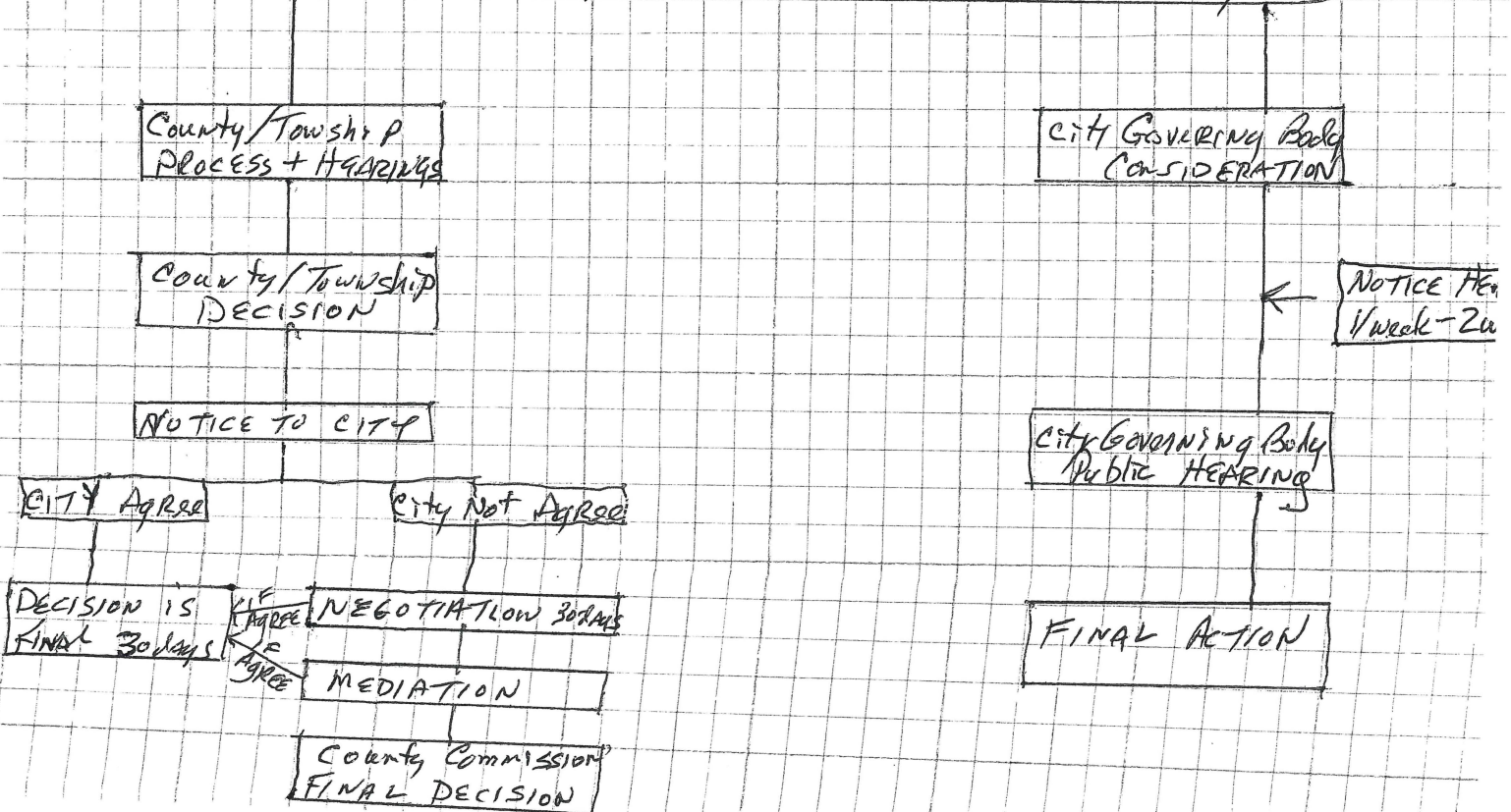
EXTRATERRITORIAL ZONING Change Process

#10055



Outer half of ETA (Joint Jurisdiction)

Inside City OR INNER HALF



PLANNING COMMISSION MEMBERSHIP

<u>CITY POPULATION</u>	<u>MAXIMUM ETA AREA</u>	<u>PLANNING COMMISSIONERS</u>
0 - 4999	1 mile	1 member
5,000 - 24,999	2 miles	2 members
25,000 or more	3 miles	3 members

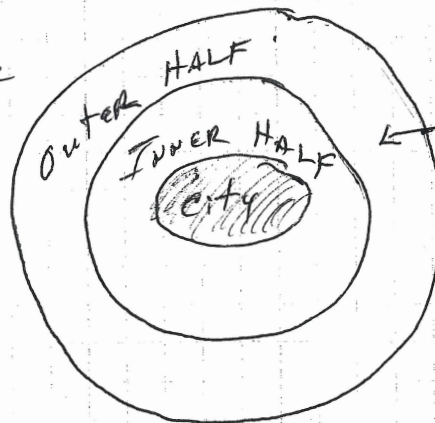
* must RESIDE in ETA area
APPOINTED by the County
Commission

Vote on all matters

Formula ETA JURISDICTIONS

N DCC 40-47-01.1 (1)
Subsection A

Somewhat cumbersome
Not widely used

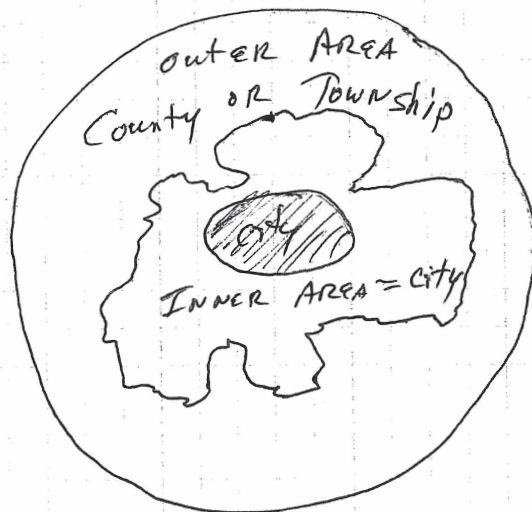


area of joint jurisdiction

NEGOTIATED ETA JURISDICTIONS

N DCC 40-47 01.1 (1)
Subsection C

Used frequently



Set by mutual Agreement
Able to be re-negotiated
No area of joint jurisdiction

AREAS may be Affected by
Topography
Rivers + Streams
Flood plains
Roads
Utilities
Growth directions
etc.

**Senate Political Subdivisions
Chairman – Senator Randy Burckhard**

Testimony

By: Shaun Sipma, Mayor, City of Minot
Email: shaun.sipma@minotnd.org
Phone: 701.721.6839

HB 1165

Good morning Chairman Burckhard and members of the Senate Political Subdivisions Committee. My name is Shaun Sipma, and I am the Mayor of Minot. I want to thank you for the opportunity today to represent the City of Minot in opposing House Bill 1165.

According to its language, this bill would provide that “every resident of a city and any resident of the extraterritorial zone jurisdiction of the city who is qualified to vote at general elections may vote at all city elections held by that city.”

We believe this bill, if passed, would contribute to the erosion of local control, which is a critical element for the success of any municipal government.

States are best served when elected state officials are empowered to make decisions in the best interests of their residents.

Counties are best served when elected county officials are entrusted with decision-making authority.

And communities like Minot are best served when local elected leaders make decisions regarding the future of their cities and their residents.

That is why we believe HB1165 is unnecessary legislation that would complicate and hamper the efforts of cities to govern in the best interests of their residents.

No doubt we’re all familiar with the phrase “Taxation without representation.” In fact, this slogan was one of the reasons behind the creation of our great nation, when patriots of the American revolution banded together in opposition to tyranny.

Today, HB 1165 amounts to “representation without taxation.”

Those who choose to live outside the City of Minot, for example, do not contribute to the city’s annual budget through property taxes. They do not contribute to the cost of fire and police protection provided by the city. Their property taxes do not support the City of Minot’s snow removal efforts or the construction of new roadways and improved infrastructure.

In addition, the property taxes paid by those who live in the two-mile ET zone do not support the Minot Park District and its efforts to create and operate recreational opportunities and attractions like the Roosevelt Park Zoo. Their property taxes also do not benefit the Minot Public School District; instead, the portion of their property taxes dedicated to schools is utilized by schools outside of Minot, such as Nedrose or South Prairie.

Those who live in the two-mile extraterritorial zone have made a purposeful choice to reside outside of their respective city. They may have different reasons for choosing to live there - perhaps they simply want to avoid the confines of a large city, but still enjoy being close to a larger community to take advantage of available opportunities, whether those opportunities are economic, educational, or personal. But those choices have conditions and consequences.

Boundaries matter. In Minot, our community is home to four separate legislative districts. But residents living within the boundaries of District 40 are not permitted to vote in District 38. Residents of District 3 do not vote in District 40. And residents of District 5 do not vote in District 38.

Why? Because boundaries matter.

It is true that residents living in the two-mile zone must abide by City of Minot building and planning codes, with good reason. These zones are created in anticipation of eventually being annexed into City limits. Applying the same codes now ensures that infrastructure like roads, sewer lines, water lines, and storm sewers are properly designed and are not at risk of needing costly replacement or repairs when they become the fiscal responsibility of City taxpayers.

The residents of the two-mile zone also have significant representation on the Minot Planning Commission; 3 of the 13 commission members are appointed by Ward County and live outside the City. That is done on purpose to ensure that residents in the two-mile zone have a voice in code issues that affect them. This is where they have a voice on matters that may impact them.

If HB 1165 is approved, residents living outside the City of Minot, for example, would have the same voting privileges as Minot residents on City Council elections, Minot Public School board elections and bond issues, and Minot Park Board issues, despite not contributing one dollar of property tax to support these entities.

Let's think about this issue in reverse: Should Minot residents vote in Nedrose school board elections, or on a South Prairie school bond issue? No, because residents living within Minot do not support these districts through property tax funding or by living within those districts; therefore, they have not earned a voice through the ballot box, either.

Local control must be maintained at all levels. HB 1165 would erode that control.

I appreciate the opportunity to appear before you today to discuss why we believe this legislation would be detrimental to communities across North Dakota. As Mayor of the City of Minot, I urge you to give HB 1165 a "Do Not Pass" recommendation.

Thank you and I would be happy to stand for any questions.



**Testimony of Rachel Laqua, Principal Planner
on behalf of the City of Williston
in Opposition to House Bill 1165
Senate Political Subdivisions Committee
March 18, 2021**

Chairman Burckhard and members of the Senate Political Subdivisions Committee:

My name is Rachel Laqua, Principal Planner with the City of Williston Planning and Zoning Department. I am testifying this morning in opposition to House Bill 1165 on behalf of the City of Williston.

The City of Williston has concerns regarding this bill.

The extension of the ETJ is to allow the careful planning of areas which require future orderly growth. ETJ areas allow for the City to protect areas that they will grow into by ensuring that only compatible development is built. Any development needs to be able to be serviced by City infrastructure in the future, and needs to be compatible with the planned zoning. Future street plans, future land use plans, and future sewer and water infrastructure plans all depend on ETJ areas being developed to accommodate that future growth. Without an ETJ, development could end up being haphazard and disrupt planned future infrastructure networks. Rearranging the development of those infrastructure improvements can end up being extremely costly to municipalities and taxpayers.

For example, in the ETJ, most residences are served by septic systems, rural water, and gravel roads. Typically, that style of development works well, but can be hard to develop around without appropriate planning for future development. Areas without ETJ's can end up with services that are inadequate for transition to more urban service needs. Planning for how to develop around and with those areas prior to their development saves both the City and the taxpayers from having to correct costly errors later. Without the ETJ, housing could be built in an area planned to be industrial, or large lot development might be built without the ability to accommodate a sewer line needed to allow development in a large portion of the surrounding area.

A specific example of this occurred in Williston. A subdivision built in a nearby area of the County featured half acre rural lots. As this part of the area around the city was annexed into City Limits, there was outside private pressure on the area to split the area into smaller lots to increase density. However, there was no sewer nearby, and the new lots would not have been large enough to support a septic system. In response to this, the City put together several improvement districts (one per street) to pave the streets and add sewer lines. However, only half of those improvement districts passed the protest hearings. Now, individuals on the streets which didn't pass their improvement district are having to pay personally to connect to the sewer lines in the area as their septic systems, which were aging when the districts were proposed, have failed. This is at great cost to these individual taxpayers.

In the future, a development like this in the ETJ could be helped not by removing the ability for development, but by creating a subdivision which takes into consideration future development and, for example, reserves part of the development for urban development, or allows an easy path for a sewer

line to make a connection around or through the development. Overall, ETJs are a valuable planning tool, and create minimal disruption for residents while providing a great deal of protection to cities and city taxpayers.

Bills like the one before you, which requires allowing ETJ residents to vote in City elections, complicate this issue. ETJ residents do not utilize the services of the City, and therefore should not be able to vote in City elections.

Jurisdiction over ETJ's extends only to building, fire, and planning codes. If the issue is one of representation, Planning and Zoning Commission boards include ETJ residents as appointees.

There is no reason for representation of ETJ's on other boards or through elections, as the issues at hand typically do not affect ETJ residents.

In fact, allowing ETJ residents to vote in City elections could cause derailment of vital City infrastructure goals and capital improvement plans. For example, ETJ residents have no reason to vote for proposals which may increase City expenditures – but may not realize that they don't pay City taxes. This could lead to "no" votes on vital projects.

If there is no affect of these proposals on ETJ residents, then there is no reason those residents should be voting. Residents who may not have the knowledge or background to determine the long term effects of how their vote affects a City they do not live in should not vote in those City elections.

This bill would change the relationship between ETJs and their nearby City, which in turn impacts the potential for orderly and cost-effective growth of the City. This item should be left to the current standards of 40-47-01.01. ETJ residents should not be able to vote in City elections.

We therefore respectfully request a DO NOT PASS recommendation for House Bill 1165.

Thank you for your time.

Senate Political Subdivisions Committee

Senator Randy Burckhard, Chairman

Senator Howard Anderson, Vice-Chairman

March 18, 2021

Chairman Burckhard, Members of the Senate Political Subdivisions Committee:

My name is Steve Bakken and I am the Mayor of Bismarck.

I am providing testimony on behalf of the City of Bismarck in opposition of House Bill 1165.

The Bismarck City Commission voted 4-1 at its January 26, 2021 City Commission meeting to oppose HB 1165.

Concern was expressed by the City Commission about extending voting rights to persons residing outside of Bismarck's corporate limits that would allowed them to vote on City matters that have no direct nexus to their residency in the extra territorial zoning jurisdiction of the city.

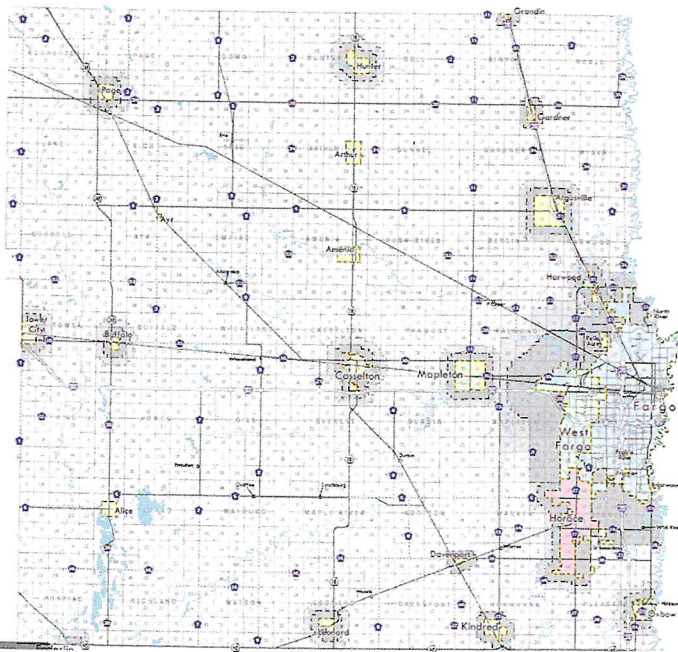
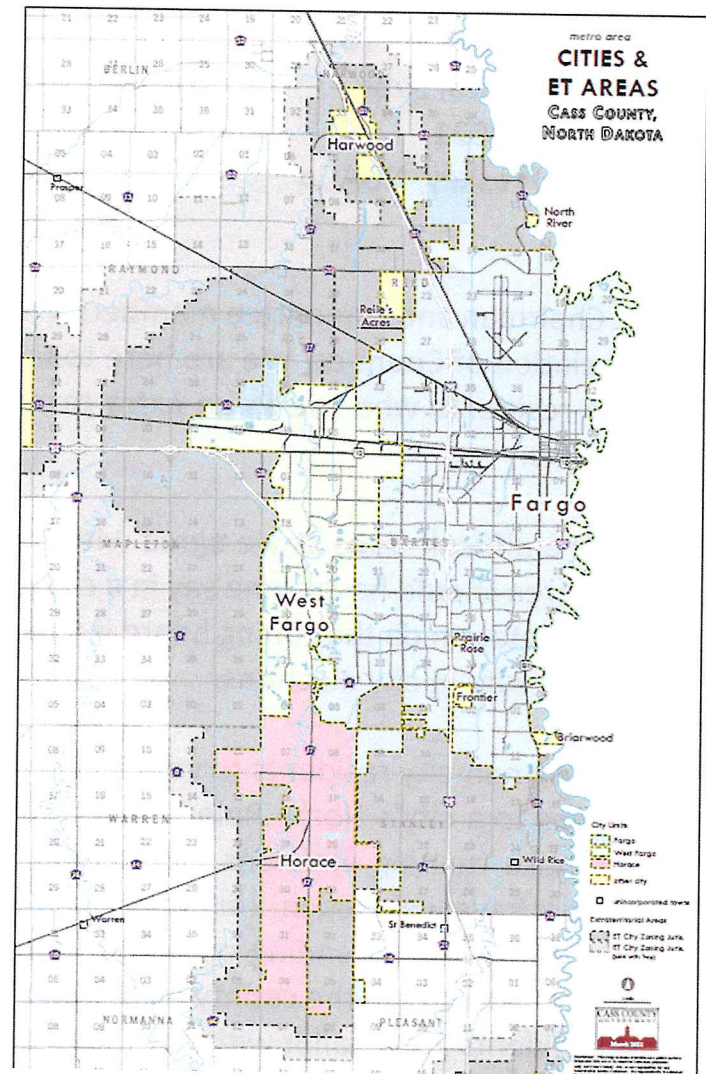
City budget issues, tax ordinances, and referral and initiation of ordinances are powers reserved for the citizens of Bismarck as defined in Bismarck's Home Rule Charter. Extra territorial residents do not pay city property taxes but by voting would have the ability to increase City taxes on our residents. There are also equal protection concerns about taxation on city residents without equal voting rights. I believe this bill, if passed, would contribute to the loss of local control, which is a critical part of the success of any city government. Bismarck is best served when the members of the Bismarck City Commission are elected by Bismarck residents.

The only City item the extra territorial residents are subject to is zoning. Residents who reside in the extra territorial zoning jurisdiction of the city have significant representation on the Bismarck Planning and Zoning Commission. There is a County Commissioner and two ETA residents who are appointed by the Burleigh County commission to serve on the Bismarck Planning and Zoning Commission. The City of Bismarck and Burleigh County both apply the same International Building Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, and North Dakota Plumbing Code. Over the past several years, members of the City Commission and members of the County Commission have met to discuss the few issues that have been expressed by persons residing in the extra territorial zoning jurisdiction of the city. We are currently working together and participating in meetings with various stakeholders who have an interest in flood plain regulations.

On behalf of the City of Bismarck, I urge you to give HB 1165 a DO NOT PASS recommendation.

Thank you for the opportunity to provide testimony in opposition of House Bill 1165.

Steve Bakken, Mayor
City of Bismarck
701-355-1300
sbakken@bismarcknd.gov



CITIES & ET AREAS CASS COUNTY, NORTH DAKOTA

- City Limits
- Fargo
 - West Fargo
 - Horace
 - other city
- unincorporated towns
- Extraterritorial Areas
- ET City Zoning Jurisdiction
 - ET City Zoning Jurisdiction (joint with Twp)



Disclaimer: This map is provided as a reference only. It is not intended to be used for legal purposes. The map is not a warranty, representation, or endorsement of any product or service. The map is not a guarantee of accuracy. The map is not a contract. The map is not a statement of opinion. The map is not a statement of fact. The map is not a statement of law. The map is not a statement of policy. The map is not a statement of procedure. The map is not a statement of result. The map is not a statement of conclusion. The map is not a statement of recommendation. The map is not a statement of approval. The map is not a statement of disapproval. The map is not a statement of opinion. The map is not a statement of fact. The map is not a statement of law. The map is not a statement of policy. The map is not a statement of procedure. The map is not a statement of result. The map is not a statement of conclusion. The map is not a statement of recommendation. The map is not a statement of approval. The map is not a statement of disapproval.

Written Testimony To
Senate Political Subs
March 18, 2021
Donnell Preskey, NDACo

RE: Opposition to HB 1165

Mr. Chairman and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. We are here today in opposition to HB 1165 which would allow residents who live in an extra territorial (ET) area of a city to vote in city elections.

This is a difficult issue as we agree with the premise behind HB 1165; residents of an ET area should have some say in a city government that affects them by zoning. Representation on the zoning board is a more appropriate resolution than allowing them to vote in city elections.

Allowing non-city residents to vote in city elections would also give them a vote on changes to a city's Home Rule Charter, tax issues, and municipal judge. It would also make running elections more difficult. Which is where most of our county auditors have weighed in – in opposition. There would need to be numerous ballot styles for cities depending on where they live. I have provided maps from Cass County. Each city in the county has some ET area on their border. Making sure that the residents get a ballot with city races, and not the city park district races, would be complicated.

In Cass County for example, eleven of the twenty-seven cities have the opportunity for appointment to their city zoning board. Of those, four have vacancies for rural residents, despite the County Commission's best efforts to recruit people from the ET areas for these city boards. Even on the Fargo Planning Board in which the county appoints three positions from the ET area, only one is filled, by a County Commissioner.

NDACo respectfully urges you to recommend a Do Not Pass on HB 1165.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 18, 2021

TO: Chairman Burckhard and Members of the Political Subdivisions Committee

FR: Brian D. Newby, State Elections Director on behalf of Secretary of State Al Jaeger

RE: HB 1165 – Qualified Electors in City Elections

Currently, NDCC § 40-21-01 does not address voting for residents of extraterritorial zoning jurisdictions.

With HB 1165, allowing such persons to vote in city elections is a policy decision in front of this legislative committee. The Secretary of State's testimony seeks only to raise operational items for awareness, while this policy is being considered, in order to ensure all eligible voters are included and receive their appropriate ballot in such elections.

As background, North Dakota's Central Voter File ties each person to a county and other jurisdictions based upon a voter's residential street address. The importance of a voter receiving the correct ballot is the foundation of our government, ensuring that the proper people vote for their representatives and issues. Thus, voters are placed in precincts for the purpose of assigning ballots and reporting results.

Jurisdictions layer upon each other. For instance, a school district may cross two cities and several precincts. This sometimes causes split-precincts, where voters are further assigned to specific ballot styles because of the contests that are and are not included. Each time a jurisdiction layer is added, the complexity of an election increases, resulting in more ballot styles. This creates additional set-up, programming, and proof-reading requirements upon the county auditors who locally run elections.

Likely, these layers can be determined today because extraterritorial zoning jurisdictions have been defined. However, because the mileage requirements for the size of the extraterritorial zoning jurisdictions are tied to population, and with the 2020 census results forthcoming later this year, these new census numbers may impact these jurisdictions. It could be prudent to delay implementation of this potential policy change until after the census results are known. That way, this process can be refined over several years, before the next census.

Another potential consideration, in association with election deadlines, would be the timing of ordinances that create or expand these zoning jurisdictions. Inclusion of a new zoning jurisdiction, as mentioned, would have downstream impacts on creation of ballots, and should be prohibited from occurring within a certain timeframe—perhaps 120 days—before an election,

Managing jurisdictional boundaries for the purposes of developing ballots is relatively routine, but on behalf of the Secretary of State and his election team, I encourage the committee to consider the practicality of the operational impacts when evaluating this policy. While the considerations here are by no means exhaustive of all potential implementation issues, addressing these mentioned up-front in the legislation likely will minimize potential operational impacts should these policy changes be adopted.

Testimony Presented on HB 1165 to the

Political Subdivision Committee

Senator Randy Burckhard, Chair

By

Steven Sprague, City Auditor

City of Fargo

March 15, 2021

This statement expresses the opposition of the Fargo City Commission to House Bill 1165 relating to qualified electors in city elections.

North Dakota Century Code 16.1-01-04 establishes the Qualifications of electors, namely

1. To qualify as an elector of this state, an individual must be:
 - a. A citizen of the United States
 - b. Eighteen year or older; and
 - c. ***A resident of this state who has resided in the precinct at least thirty days immediately preceding any election.***
2. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33
3. A qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.
4. An elector seeking to vote in an election must meet the identification requirements specified in section 16.1-01-04.1

The purpose of an extraterritorial zoning jurisdiction is limited to zoning and subdivision regulation. Otherwise, the extraterritorial zoning jurisdiction is governed by the township and the county. There is no taxing authority that applies to the extraterritorial area. The primary purpose of zoning and subdivision authority is simply to govern the placement and development of land uses that might infringe on future infrastructure needs. There is already extraterritorial representation on the planning commission to govern the zoning and subdivision regulations.

I feel confident the State would not allow someone who is not a resident of the State of North Dakota to vote in a North Dakota election. Voting rights are reserved for citizens in the City, County or State in which they reside. Voting rights are not intended for people **not** living in the City, County or State in which they hope to vote.

That being said HB 1165 extends voting rights to citizens who do not reside in the City and should be **OPPOSED**.

For the reasons expressed, the City of Fargo respectfully requests a **DO NOT PASS** recommendation on HB1165.

Thank you for the important work you do for the State of North Dakota and for the opportunity to testify on this matter.

Senator Randy Burckhard and
Members of the Senate Political Sub-Divisions Committee:

House Bill 1165 which proposes that residents living in an extraterritorial jurisdiction be given the right to vote in all city elections in the city that has exercised its right to enforce building and zoning requirements is not good legislation.

It is in the Cities of North Dakota's best interest, the State's best interest, as well as the best interest of the residents who live in the extraterritorial zones that there be orderly development in these areas around our cities. Who would argue that proper, sound, thoughtful long range planning is something that is harmful to our State or its residents?

We do not want to see this, what we see as an obligation to our residents, abused. If there is abuse, regulate the abuse.

To demand the right to vote by non city residents in city elections is a folly that if allowed must be and will be allowed in other situations as well. For example, what about people who own property in the extraterritorial area but do not live there? Their interests could be far greater than someone who lives in the extraterritorial zone.

I own property in at least three school districts, but can vote in only one. I live in the city but own a home in the country as well. Can I also vote in the township election? What about out of state property owners, do they get to vote for our governor or other state officers or legislators? I pay sales tax in Fargo and Bismarck, do I get to vote in their city elections as well as in Jamestown? Does this sound absurd? Of course it does! However, this is not anymore absurd than allowing residents in the extraterritorial jurisdictions to vote in all city elections. If you allow this to occur in one case you will eventually have to do so in others as well.

Given proper consideration I am confident that the majority would agree that orderly development is necessary in these areas. We understand that this does not always sit well with everyone, nor does every action taken by the legislature. This bill really is not about the right of franchise as much as it is an attempt to intimidate local city government in the hope that they will not carry out their responsibilities.

Please stay off of this slippery slope and vote No on House Bill 1165.

Respectfully submitted,

Dwaine Heinrich

Dwaine Heinrich, Mayor
City of Jamestown

March 16, 2021

Senate Political Subdivision Committee

HB 1165

Chairman Burckhard, Vice Chairman Anderson and members of the committee, for the record I am Diane Affeldt, city auditor for the City of Garrison and President of the North Dakota League of Cities. I am providing written testimony today to express strong opposition in HB 1165 relating to qualified electors in city elections.

Residents of the extraterritorial zoning area do not pay city taxes, city utilities or special assessments. Voting rights should be reserved for only the citizens within the boundaries of the City. To allow such voting would cause confusion especially when a city and county election are held at the same time and in most small ND communities at the same voting place.

Once you open this election eligibility, more situations could arise between a city and extraterritorial.

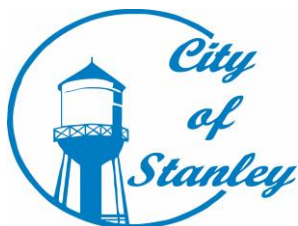
I ask that you follow the current NDCC 16.1-01-04 establishes the Qualifications for electors. Another NDCC that is not broke so why mess with it.

I do not think the State would allow someone who is not a resident the ability to vote in a North Dakota election. Keep voting rights reserved for citizens in the City, County and State in which they reside.

I would like to strongly urge the committee to defeat this bill in committee.

Thank you for all the important work you do for the citizens of this great state and opportunity to submit testimony on this matter.

Diane Affeldt

**Allyn Sveen – Stanley City Auditor**

221 S. Main St. – PO Box 249, Stanley, ND 58784-0249

Tel. (701) 628-2225 Fax (701) 628-2232 Fax

TTY 1-800-366-6888

E-Mail allyn@stanleynd.us

March 15, 2021

Senate Political Subdivisions

HB #1165 - (3/18/2021 Hearing – 10:30 A.M.)

Dear Chair Burckhard and Honorable Members of the Senate Political Subdivisions Committee:

I am respectfully requesting you to support a **“DO NOT PASS”** on House Bill #1165 relating to qualified electors in city elections.

This bill presents a lot of controversy. Members of the extraterritorial zoning area do not pay city taxes, most township levies are at 18.00 mills and nearly all cities at a mill levy that far exceeds the township levy. Residents of the extraterritorial zoning should not be part of the voting process if they are exempted from paying city taxes and special assessments.

Does the resident of the extraterritorial zoning get to arbitrarily decide whether they vote in the city or the township election each year or do all residents within this zoning jurisdiction vote as city residents? This process seems unmanageable. If an extraterritorial resident is a qualified elector in a city election does that make them eligible to run for city council or other elected position, this certainly does not seem fair?

Residents in extraterritorial zoning could potentially be part of two different legislative or county commissioner districts; does this make them a qualified resident of such commissioner or legislative district and able to run for office? These districts are established off population; this would distort population counts within county commissioner and legislative districts. Further, how does this affect State funding that is based off census counts that is allocated to political subdivisions, when a “township” resident is potentially claiming to be a “city” resident for the purpose of voting.

Again, your support for a **“DO NOT PASS”** on HB #1165 is greatly appreciated. The bill is unfair, presents too many unanswered questions and appears to be unmanageable. Further, prior testimony submitted in opposition of the bill clearly presents reasons why this bill should be defeated.

Sincerely,
Allyn Sveen
Stanley City Auditor

E-mail: District #2 & #4 Senate Representatives

drust@nd.govjkannianen@nd.gov

Senate Political Subdivisions Committee

Senator Randy Burckhard, Chairman

Senator Howard Anderson, Vice-Chairman

March 18, 2021

Chairman Burckhard, Members of the Senate Political Subdivisions Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony on behalf of the City of Bismarck in opposition of House Bill 1165.

The Bismarck City Commission voted 4-1 at its January 26, 2021 City Commission meeting to oppose HB 1165.

Concern was expressed about extending voting rights to persons residing outside of Bismarck's corporate limits that would allowed them to vote on City matters that have no direct nexus to their residency in the extra territorial zoning district of the city. City budget issues, tax ordinances, and referral and initiation of ordinances are powers reserved for the citizens of Bismarck as defined in Bismarck's Home Rule Charter. Extra territorial residents do not pay city property taxes but by voting would have the ability to increase City taxes on our residents. There are also equal protection concerns about taxation on city residents without equal voting rights. The only City item the extra territorial residents are subject to is zoning. There is a County Commissioner and two ETA residents who do have representation on the Bismarck Planning and Zoning Board.

On behalf of the City of Bismarck, I urge you to give HB 1165 a DO NOT PASS recommendation.

Thank you for the opportunity to provide written testimony in opposition of House Bill 1165.

Keith J. Hunke, City Administrator
City of Bismarck
701-355-1300
khunke@bismarcknd.gov



City of Mandan Administration

Senate Political Subdivisions Committee

HB 1165

Senator Randy Burckhard, Chair

March 17, 2021

Chairman Burckhard, Members of the Committee, my name is Jim Neubauer and I am the City Administrator for Mandan North Dakota. I am submitting this testimony in opposition to House Bill 1165.

The City of Mandan and Morton County have established a good working relationship regarding planning and zoning issues. Both entities recognize that extraterritorial zoning applies to the orderly growth of the community and allows for efficient development of infrastructure into these areas.

To ensure this good working relationship is maintained, two members of the Mandan City Commission sit on the Morton County Planning and Zoning Commission and the Mandan Planning and Zoning Commission includes one representative from the Morton County Commission and two representatives from the extraterritorial zoning area.

The make-up of the Mandan Planning and Zoning Commission ensures that there is representation and thus a voice from the extraterritorial zoning area, which is already required by North Dakota Century Code.

Allowing residents of the extraterritorial zoning area to vote in city elections would provide them the same voting rights a qualified elector residing within city limits who is subject to city real estate taxes, special assessments and similar responsibilities, without bearing the responsibilities for these obligations placed upon city residents.

It is for these reasons that we would ask for a do not pass on HB 1165.



HB 1165

City of West Fargo Testimony

Provided by Bernie L. Dardis – President, Board of Commissioners

HB 1165 relates to qualified electors in city elections as it relates to the extraterritorial authority (ETA) for zoning and subdivision purposes for cities. The City of West Fargo would like to go on record as being **in opposition** to the bill as written for the following reasons:

- West Fargo has experienced tremendous growth over the last several decades requiring much forethought to the layout of streets and the development of compatible uses. Much coordination has taken place with townships, Cass County, and City of Fargo to ensure that as growth occurs costly improvements and compatibility of uses are properly accommodated.
- Extraterritorial Authority (ETA) refers to a City's ability to manage growth outside of its incorporated limits by granting City's the authority to regulate zoning and subdivision control within an area that is approved by resolution for a specific distance outside of the incorporated limits of the City. It only applies to zoning and subdivision control and does not extend to other City services or authority.
- Without the ETA provided for in the current statutes, cities may consider premature annexation of bordering areas to control the proper planning for and timing of development. Premature annexation causes tax implications for property owners and should be avoided
- ETA does not give cities the ability to tax outside of the incorporated limits or enforce any ordinances beyond zoning and subdivision control. If this bill were to pass, voters who do not pay taxes to the City would affect the election results of the City.

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- ET residents are represented when it comes to zoning and subdivision control. The City of West Fargo has 8 members on its Planning Commission. Three members reside in the extraterritorial area and are appointed by the Cass County Board of Commissioners.

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- In West Fargo, all ET area applications are sent to the County and township(s) for review. Any comments/recommendations are weighed heavily in consideration of the application. The ETA has helped to conduct proper planning in growth areas, and has helped to properly administer floodplain regulations in flood prone areas.

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- The ETA statutes were well thought out and have been in place since 1975. The ETA was expanded in 1997 which raised some concerns. As a result the outer area of the ET was changed in 2009 to be considered joint jurisdictional area. The City of West Fargo coordinates effectively with Cass County, Reed, Raymond, Mapleton and Warren Townships and would like to go on record in support of maintaining the current statutes.

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The City of West Fargo urges a **DO NOT PASS recommendation on HB 1165.**

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

HB 1165
3/19/2021

A BILL for an Act to amend and reenact section 40-21-01 of the North Dakota Century Code, relating to qualified electors in city elections.

Chairman Burckhard opened the discussion on HB 1165 at 10:09 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Joint jurisdiction
- Informal taskforce

Senator Anderson moves **DO NOT PASS**.

Senator Oban seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 7-0-0

Senator Anderson will carry HB 1165.

Additional written testimony: N/A

Chairman Burckhard closed the discussion on HB 1165 at 10:20 a.m.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1165: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1165 was placed on the Fourteenth order on the calendar.