

15.0653.01000

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. HB 1258

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1258

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1258
2/5/2015
23299

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to enforcement of extraterritorial zoning

Minutes:

Testimony 1 and 2

Chairman Klemin: Opened the hearing on HB 1258

Representative Mock: Testimony 1 It would turn this into a study. Many people have opinions on this.

Representative Koppelman: Your study resolution seems narrow. Would you consider a broader study?

Representative Mock: We were here during 4047 it was elaborate and narrowed down. This was kept narrowed because we weren't sure where this problem was and we want to get to it and stay focused.

Opposition:

Larry Seibersen: Townships officer. We support the study amendment but not the bill alone.

Bill Wocken: We are opposed to the bill but we support the amendment.

Larry Wile: North Dakota Planning Association. We questioned the validity of the bill. As 4047 provides for the ability to zone in extraterritorial areas and also gives the authority to enforce without the law enforcement would not be possible. We suggest that if the bill proceeds, to clarify the language. We would be in favor of the study. Testimony 2

Representative Maragos: Does your group represent planning commissions around the state? What is required for membership in your group?

Larry Wile: The membership is open and the mission is to provide information relating to planning, to further planning education and understanding within the state, and so members of our group include planning commissioners, planning zoning commissioners, staff, members of cities, counties, and other members.

Representative Koppelman: What do you do on your day job?

Larry Wile: I work for the city of West Fargo as their planning director.

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Prairie Room, State Capitol

HB 1258
2/5/2015
23322

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to enforcement of extraterritorial zoning

Minutes:

Chairman Klemin: Opened hearing on HB 1258

Representative Maragos: Moved to adopt the amendments

Representative Beadle: Seconded the motion

A voice vote was taken: All in favor

Motion carries

Representative Beadle: Motioned a do pass

Representative Kelsh: Seconded

A Roll Call Vote was Taken: Yes 13, No 0, Absent 1 (Koppelman)

Motion carries

Representative Anderson will carry the bill

JK
2/5/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1258

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of extraterritorial zoning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - EXTRATERRITORIAL ZONING. During the 2015-16 interim, the legislative management shall consider studying the utilization and enforcement of extraterritorial zoning. The study must include a review of zoning ordinances, building codes, health codes, and nuisance abatement policies, and how the enforcement of such regulations can be adequately addressed through extraterritorial zoning authority. The legislative management shall report its findings and recommendations, along with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 2/5/2015
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1258

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0103.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Maragos Seconded By Beadle

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote passed

Date: 2/5/2015
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1238

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Beadle Seconded By Kelsh

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	/				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 13 No 0

Absent 1 (Koppelman)

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1258: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1258 was placed on the
Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of extraterritorial zoning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - EXTRATERRITORIAL

ZONING. During the 2015-16 interim, the legislative management shall consider studying the utilization and enforcement of extraterritorial zoning. The study must include a review of zoning ordinances, building codes, health codes, and nuisance abatement policies, and how the enforcement of such regulations can be adequately addressed through extraterritorial zoning authority. The legislative management shall report its findings and recommendations, along with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

2015 SENATE POLITICAL SUBDIVISIONS

HB 1258

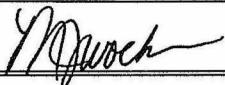
2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1258
3/12/2015
Job Number 24738

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for legislative management study of extraterritorial zoning.

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the hearing for HB 1258. All senators were present.

Rep. Cory Moch District 42. Prime sponsor of HB 1258. For the record I should let the committee know that my first legislative session is 2009, and it was that session that I was baptized on the issue of extraterritorial zoning. We had some pretty comprehensive legislation before our House Political Subdivisions committee. We tackled a lot of the issues regarding the zoning authority who has essentially the right of first refusal or jurisdiction in the inner circle or outer circle of extraterritorial zoning is utilized. In this interim a constituent had brought a concern to me that the city of Grand Forks which has utilized its extraterritorial zoning authority that there were questions of enforcement. So enforcing policies under or utilizing their extraterritorial zoning but they were not enforcing it. The township was having to pay for and enforce the city's zoning. They would like just that if a city is going to use their zoning authority, that they are financially responsible for enforcing their authority. We introduced the bill so the very first version of the bill quite simply states that a political subdivision is responsible for the enforcement of regulations in any zone created through the use of that political subdivisions extraterritorial zoning authority. Well we visited with townships and counties and boy did we learn more about the different types of zoning, and the issues that may have caused this to be brought to our attention. In some cases it was health code violations and others it was nuisance abatement, and we figured this is far more complex than a simple sentence in the extraterritorial zoning code and we thought it would be better suited for all parties that we just recommend and give the management the authority to look at this matter and if there are questions of enforcement who is enforcing. If there is any situation where a political subdivision is using their authority but is not enforcing it. Is there any appeal mechanism for the political subdivision on the outer half of that circle. This is the engrossed version of HB 1258. It is a study to look into the enforcement mechanisms, review the policies and the ordinances, building codes and health codes and making sure the enforcement is adequately done by the parties involved.

Senator Judy Lee you probably learned in your study then about 15 years ago this whole section of statute was re-written. Senator Erlacher was chair of this committee at that time and there was tremendous amount of work including people from Fargo and West Fargo, where at that time were practically bloody because of the ET zoning among Fargo and West Fargo and Horace. However, a wonderful program which has been quite successful using mediation has resulted from that. My understanding is the statute reads if the city of West Fargo is using its ET zoning and it extends into Stanley Township, Stanley Township has to consider that but the building permit is issued from Stanley Township not in the City of West Fargo. So, I am not quite understanding where the problem is are we or do we have one situation where there is somebody who has a hair up his nose or do we have a lot of situations where people are unhappy with the way the interaction of the political subdivisions is going.

Rep. Cory Moch I contacted the individuals and tried to get specific examples. What we found was some of those examples were nuisance abatement. They were health code or potential health code violations, abandoned cars, junk cars. **Senator Judy Lee** It is not always a pleasure living in a non-incorporated sub-division. **Rep. Cory Moch** It really is. In those cases and there was also an issue of violating or having a chop shop in a residentially zoned area outside of the city limits. It wasn't zoned properly for the industrial use, but there was a mechanic who was moonlighting and was conducting business in an area that wasn't zoned for the type of business he was trying to conduct. So these are some of the questions that emerged. The last one was one that would not fall under the jurisdiction of the authority of the ET zoning law. There was a railroad spur that goes north of Grand Forks and it extends through many of the areas that have been zoned using ETzoning authority. There have been roads constructed or built around those railroad spurs but there is no enforcement of clearing the tracks, right of way, and that was the initial concern that the individual brought before me. As I visit with the counties and the townships and even with the City of Grand Forks specifically that was not an ET zoning issue, that was a railroad and that has nothing to do with this. It was far bigger apple than anyone really wanted to take a bite at or should at for that matter. But we did learn that there are some very unique circumstances where authority or enforcement has not occurred or is not occurred in a timely manner I am aware of the mediation component. There were so many questions that was sort of lingering and both parties that had issue never really took it to a mediation level. I think the township bit the bullet and just paid for did what they had to do to live with it. But right or wrong they had questions of whether or not the law is clear enough about enforcement of those regulations and that was the purpose of the study.

Senator Judy Lee Lets' talk about these nuisance ordinances. But if the community has the right to ET zoning, that will determine whether or not you can put a hog farm or whatever, but the permit is still issued by the local townships. If your living in a rural subdivision at least in my part of the world, you go out there in most cases because you want a little bigger lot, you want the freedom to be able to have your dog run at large where there your neighbors does, that kind of thing, and we've also had complaints they don't want to pay specials for sewer and gutter. They don't want to have any of that stuff, they want to escape all of the nasty taxes from the city so they move out into the country and then it snows and they call and they say aren't you clearing the street. The city says you aren't in the city limits you are in our ET zoning. All we needed to say is that you have appropriate water and sewer, those kinds of things whether it's the county or the city. So

then they call the township officers who have \$5 in their budget and say when are you coming to clear the snow, and the township officer say welcome to rural living. You get to buy snow removal equipment like every rural property owner does. So I am not sure. The point is there ought to be a law because people can't get along because they are ticked off about some little things. If they really wanted to be regulated to that level, they need to be in a incorporated city because living in the country is not quite the same.

Rep. Cory Mock You put up so many really wonderful examples of really why ET zoning is such a complicated issue. We heard some of those and some other larger and more unique situations 6 years ago when the most recent law was passed. We are at a point of the study is making sure, as we were to propose, if there was any legislation necessary that it is not having any unintended consequences or we would really be addressing the problem at hand. In many of these circumstances there may not be the issue that the individual believes that there is but that was when we brought the constituent request, brought it forward and we did not want to cause any harm to the law. We certainly don't want to open that can of worms. But we did want to make sure that if there is a question of enforcement or in some cases if there is a question regarding appeal that the process is in place. The mediation, that provision is there. We just wanted as we amended into the study is that if there was individual circumstances that may fall slightly through a crack or a unique situation that is going unaddressed in the statute that is we are able to do our due process, and make a recommendation next session instead of forcing anything down this quickly.

Senator Bekkedahl This is interesting to me because with the growth of our city, the big word for our city the last three years has been compliance officer. We never had a compliance officer until this growth happened. But compliance officers are people that go out and make sure that you don't have junk in your backyard, or you don't have a dog at large or a camper where people are urinating outside the backdoor. We got to a point, in the City of Williston where we had a compliance officer in the Building Inspection Dept. Planning Dept., Police Dept., and we had one in the Engineering Dept. We have now figured out maybe we should just have compliance officers in the Building Inspection department. My point in all of this is this issue has arisen with us just as we have the Planning and Zoning jurisdictions in all of these areas, we don't have the building permit issues, therefore we don't think we have the building inspection issues either or authority for those issues when they arise, and we get enumerable calls from these areas in the ETJ where people say somebody please tell this guy to clean up this mess. The city responds we don't jurisdiction to do that and the township says we don't have the staff to do that, the complaints continue. I am not big on mediation I don't even know how that works. All I will tell you is in spite of all our efforts to try and make things better for those people it doesn't happen under the current system. If this helps that, I would be in favor.

Senator Grabinger I don't know why, but apparently Jamestown is doing it different. When I was on the city council, our extraterritorial zone we have planning and zoning; we also have building codes that have to be enforced. You were saying in West Fargo it's different. In Jamestown we have that and we exercise that authority. I don't know why there is a difference. **Senator Judy Lee** Home Rule.

Senator Grabinger As also as far as the nuisance calls we can force a house to be cleaned up and torn down and it was just outside the city limits and just inside the extraterritorial limits too. I don't understand the good point to the study.

Chairman Burckhard asked the audience if they were in favor of the bill, in opposition to the bill or in neutral stance to the bill.

Chairman Burckhard closed the hearing on HB 1258.

Committee Discussion

Senator Judy Lee Can we delay this until tomorrow? I just would like to visit with my local political subdivision folks briefly. I will send them an email and ask them where they see this going, because it is a complicated issue but you know you just can't solve everybody's problem. You can't legislate every loose dog.

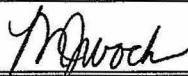
2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1258
3/13/2015
Job Number 24831

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide for legislative management study of extraterritorial zoning

Minutes:

Written testimony #1 Larry Weil (email)
Written testimony #2 Jim Gilmore (email)
Written testimony #3 Pat Zavoral (email)

Chairman Burckhard opened the committee for discussion on HB 1258. Chairman Burckhard, V. Chairman Anderson, Senators Bekkedahl, Lee, Grabinger was present. Senator Dotzenrod was absent.

Committee Discussion

Senator Judy Lee I sent a message out to some of the local folks to ask about as I was interesting in knowing what they thought in the testimony is distributed to each of you. There is a comment from Larry Weil (Testimony #1) who was here last week and he's the President of the League of Cities, and also visited with Blake Crosby this morning and they agree with what he had said, also from Jim Gilmore (Testimony #2) who is the planner from the city of Fargo and Pat Zavoral (Testimony #3) who also works with the city of Fargo. The point of all of these and the Association of Counties, also commented on it when I visited with Mr. Traynor. Every local area kind of handles these a little differently which is sort of the ultimate local control deal. So it depends on you know when Senator Grabinger was talking about the way you handle in his community. It might not be quite the same in mine even as it is in Fargo, so recognizing that we need to respond to constituents and we need to pay attention to this it appears as if in talking to the folks who represent folks from all over the state, like the League of Cities and these location of counties that if there is a problem in Grand Forks County, it's now been brought to their attention and maybe we should see if the folks in the communities and the county up there might be able to figure it out rather than legislating it for everybody in the whole state when it seems to be working pretty well after the ET zoning updates and the other changes that were updated 3 sessions ago I believe. So, anyway I would throw that out.

Senator Judy Lee My inclination is to defeat the bill because it seems as if it is not a state wide problem that the laws seem to be working well in most places. Local political

subdivisions have figured out how they are going to be handle it and they all may do it in their own way and that's okay if its local issue.

Chairman Burckhard Does Home Rule have any play in this kind of issue?

Senator Judy Lee I don't know, maybe Mr. Birst or Mr. Traynor know if Home Rule has.

Terry Traynor Home Rule is not effective, no.

Chairman Burckhard Senator Lee is that a motion?

Senator Judy Lee I move do not pass on HB1258.

2nd Senator Bekkedahl

Committee Discussion

Senator Bekkedahl A couple of questions. First, thank you for getting the information Senator Lee, because its helpful, but here's the dilemma that I see out there and may be there is answers to this. I agree with you that the local control issue is primary in this in my mind as well. On the information from Larry Wiel who used to work for the city of Williston before West Fargo, said " nuisances, cities only have the authority within the city and up to half mile outside the city limits". Then the information from Pat Zavoral the city of Fargo Administrator, " we have worked out an arrangement with the county to enforce all health and safety issues within Fargo, Cass, Public Health just like its' done in the city." I think from my perspective I just want to be more clear on not just who has the authority to handle nuisance situations in this area which is where we are getting the complaints. But if they have the authority make sure they use it. That I think is the technical issue that were seeing is County Health may come in and say they may be part of your nuisance ordinance but it doesn't fit state statutes as a nuisance for state statutes. Can you give any information Senator Lee that may clear that up?

Senator Judy Lee I guess my impression personally is that it needs to be addressed by the city and the township and the county depending upon where the authority lies. At Fargo, Cass, and every public health unit is different. In fact some of the little counties, all they can raise is 5 mills that is another issue we don't have enough money for Public Health and they don't have anybody to go out and to that kind of stuff. So, that is part of it as well. So I think that the cry from the people who faced the issues needs to be to the local political subdivisions. It isn't really a zoning issue so much as most of this is a nuisance issue. So that is addressed in a different way than zoning which really is what the bill is calling for is the extraterritorial zoning issue and that's not it. If we're going to study it then, we've got to have a study on nuisance issues and I am not quite sure that is going to rise to the level of acceptability to the Legislative Management.

Senator Anderson What I heard mostly was that a complaint comes in to those people who have the authority to enforce things but for whatever reason they don't have any money to do that. Of course a study in the zoning issues isn't going to resolve that as Senator Lee indicated. So, they can work out a shared agreement if they want to for the guy who has money and he can pay for the nuisance if they want to. But right now that seems to be the biggest problem is the guy who is supposed to enforce the nuisance doesn't have any money to do it.

Senator Grabinger I do absolutely agree and I did discuss this with counties this morning. My only issue is clarity. When I see us operating differently in different communities across the state, in handling this law, ETZ law, differently, I question whether or not we as legislators are sending out the message of this is how it should be handled. We're not clarifying how this should be done across the state. We're leaving that up to these local jurisdictions to try and work it out and come up with that. I don't know that is always best in that we don't give them clarity. I think we have a responsibility in some cases to show them what we expect and we are intent with the law. In here, we are just kind of leaving it vague.

Senator Anderson I agree that might be part of the problem what Senator Grabinger is saying, but on the other hand you know we are leaving it up to the locals to work out their solution. They might not all come to the same conclusion and I don't think that is necessarily bad thing. We don't need to try to direct everything from here because then for some people that might now be the right solution.

Senator Bekkedahl I think at the very least what we should encourage Larry as President of League of Cities to do is take this issue up in their fall meeting for some really good discussion. I think possibly a presentation, he would be a great presenter. I would like to see somebody from County Health boards involved in that discussion, and maybe some building inspection and maybe they could have a round table. I think this deserves clarity as Senator Grabinger indicated and that may be a good place to get it. The other issue is that I could use the education myself even after 20 years on this issue because when we change the legislature changed the ET zoning last session or session before, when that happened it was very confusing to me and I've lived with it now for 6 years and it still has some confusion to me. I do think its local jurisdiction. My one question that I would have is do they if the city and township and the county all agree and the county health board also agrees that nuisance issues could be addressed by city compliance departments in building inspection, can that happen under legislation? I don't know if that is a no or a yes. Anybody have an answer to that or does county health departments have total jurisdiction and they are not allowed to enter into any new agreements for these nuisances issues?

Aaron Birst Association of Counties. I am their attorney. **Senator Bekkedahl** What I was questioning was if the cities and the county and township and county health board all got together and agreed that for nuisance issues the compliance officer from the city with primary jurisdiction could become the office that coordinates the complaints and actually works through that. Can the county health departments actually do that and relinquish the authority to do that, or participate in that? What I am trying to do is the public is bouncing around. I'll go to the city and they will tell me to go to the county public health, county public health tells me to talk to the township, I am trying to just give a point of contact where that could occur if the negotiations went that way within the jurisdictions.

Aaron Birst So the easy answer is yes. If they combined even through a joint powers agreement they could get together and assign one person. Generally though the rule would be the Health district rules trump counties, cities, so the Health District is truly the first stop, but all of them could get together and put together their own ordinances and have one contact.

Senator Judy Lee I am just going to add that I absolutely appreciate Aaron Birst's remarks. Your County Health, your multi county health district doesn't have any additional staff, money or time to do this unless. If they work out a Joint Powers agreement, swell, but then those partners are going to have to fund it somehow too. We're going to be way better than we are right now in this session in providing funding to Public Health units who have had the same funding for several years at a time when the demands are hugely increasing so, help me in that area to see what we can do.

Senator Bekkedahl We do have compliance officials within the city and they can do this. That is my point, if we can talk to the District Health Unit, go by whatever rules and regulations they have, but at least have our people handle the responses from the field, I think that helps the public.

Senator Anderson Just a point of information, the way it works in the 1st District Health Unit is the city calls the 1st. District Health unit, and says I think that think is messy and they come down look at it, they say yes, then the city actually has enforcement authority and they tell the people you got to clean it up or we'll put it on your taxes.

Chairman Burckhard Are we in the same district for health unit? **Senator Judy Lee** yes, you are.

Chairman Burckhard Okay so this is the motion for do not pass? Is has been moved and seconded and discussed. We'll take the roll call vote and leave it open for Senator Dotzenrod.

Roll call vote
5 Yea, 0 No, 1 Absent
Carrier: Senator Anderson

Roll call vote 5-0-1
Senator Dotzenrod later votes *yes* on the "Do Not Pass" motion, changing the roll call vote to 6-0-0 on March 19, 2015. *Job number 26127*

Date: 3.13.15
Roll Call Vote:/

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1258**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input checked="" type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Place on Consent Calendar	<input type="checkbox"/> Rerrefer to Appropriations
Other Actions:	<input type="checkbox"/> Reconsider <input type="checkbox"/>		

Other Actions: Reconsider _____

Motion Made By Senator Judy Lee Seconded By Sen. Beckedahl

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1258, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1258 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1258

15.0653.01002
Title.

Prepared by the Legislative Council staff for
Representative Mock
February 5, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1258

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of extraterritorial zoning."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - EXTRATERRITORIAL ZONING. During the 2015-16 interim, the legislative management shall consider studying the utilization and enforcement of extraterritorial zoning. The study must include review of zoning ordinances, building codes, health codes, and nuisance abatement policies, and how the enforcement of such regulations can be adequately addressed through extraterritorial zoning authority. The legislative management shall report its findings and recommendations, along with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

HB 1258

North Dakota Planning Association Testimony

HB 1258 provides that a political subdivision is responsible for the enforcement of regulations in any zone created through the use of that political subdivision's extraterritorial zoning authority. The North Dakota Planning Association offers the following comments:

- It is unclear why the addition of the proposed legislation is necessary. A political subdivision responsible for zoning regulations within an area identified through subsection 40-47-01.1 would have to enforce their zoning regulations anyway, or else those regulations would have no meaning. In effect, subsection 40-47-01.1 would also have no meaning if the political subdivision responsible for the zoning regulations did not enforce the regulations.
- If the intent of the proposed legislation is to address junk, and the political subdivision's zoning regulation does not cover junk, then there is no authority to remedy the situation under zoning. Some political subdivisions regulate junk under nuisance ordinances, so their ordinances could not be applied to the ET area. Other jurisdictions regulate junk under both zoning and nuisance ordinances, so that they can be most effective in enforcing their ordinances.
- If the legislation does continue through the process, to clarify what is implied by the legislation the North Dakota Planning Association (NDPA) suggests that the word "**zoning**" be inserted as follows:

A political subdivision is responsible for the enforcement of **Zoning** regulations in any zone created through the use of that political subdivision's extraterritorial zoning authority.

N.B. 1258
3.13.15
#1

Lee, Judy E.

Subject: FW: 1258
Attachments: HB 1258 NDPA Testimony 2015.doc

From: Larry M. Weil [mailto:Larry.Weil@westfargond.gov]

Sent: Thursday, March 12, 2015 7:03 PM

To: Lee, Judy E.; Jim R. Brownlee; Sharon Odegaard

Cc: Brad Gengler; Jim Gilmour; Blake Crosby (blake@ndlc.org)

Subject: RE: 1258

Senator Judy Lee,

Thank you for the heads up on HB 1258.

Jim Gilmour, Brad Gengler and I (on behalf of North Dakota Planning Association) were in to testify against HB 1258 on the House side. The issue began in the ET area of Grand Forks and the legislator initiated a bill after hearing a complaint from a constituent without first talking to the City of Grand Forks. Prior to the hearing we visited a bit with the legislator, who then suggested putting it into study committee rather than kill it. The issue is that currently some cities address junk and junk vehicles under their nuisance ordinances rather than in the zoning ordinances. For nuisances, cities only have the authority within the city and up to ½ mile outside the city limits. Beyond that distance, it may become a county health issue, or some other jurisdiction. Zoning cannot address the issue unless it is included in the zoning ordinance. Zoning authority is only exclusive to the city within the inner tier, as the joint jurisdiction area is another matter.

It seems to me that communication is the issue here rather than zoning being a problem. I have not heard of any issues in the current statutes since the changes a couple of sessions ago. Cities, counties and townships have worked things out, so I really question whether the study is needed. If the study proceeds, I agree that the narrower the focus, the better.

I am attaching a copy of the testimony prepared by the North Dakota Planning Association. Brad and Jim may also wish to weigh in on this issue.

Thanks again for your inquiry on this, and let me know if I can provide more information.

Larry M Weil
Planning Director
City of West Fargo
701-433-5320

7/8/1258
3.13.15
H2

Lee, Judy E.

Subject: FW: 1258

-----Original Message-----

From: James Gilmour [<mailto:JGilmour@cityoffargo.com>]

Sent: Thursday, March 12, 2015 4:17 PM

To: Sharon Odegaard; Senator Judy Lee

Cc: Pat Zavoral; Jason Loos

Subject: Re: 1258

Fargo, and other cities, issue building permits in the ET jurisdiction and enforce the zoning and building code in the ET area. If someone is violating the zoning ordinance or building code in the ET area, the city enforces those regulations.

Health regulations are enforced by the Health Districts, which in our case is the combined Fargo-Cass health district.

I'll CC our City Attorney in case he wants to provide other information.

I think the original bill was to require cities with ET jurisdiction to be responsible for enforcement. Fargo didn't oppose because we already do the enforcement. I agree it doesn't need study, but it seems most studies either don't get started or don't make changes, so I didn't ask the City Commission to oppose the bill.

Thanks for your thoughts on the bill.

Jim Gilmour

Sent from my iPad

H.B. 1258
3.13.15
#3

Lee, Judy E.

From: Pat Zavoral <PZavoral@cityoffargo.com>
Sent: Thursday, March 12, 2015 4:14 PM
To: Senator Judy Lee
Cc: James Gilmour

Follow Up Flag: Follow up
Flag Status: Flagged

Senator Lee, I believe Jim Gilmour will wade in on this question also. From the City Administration perspective in Cass County, Fargo exercises its ET authority to the legal limit within 4 miles of the City boundaries. We have worked out an arrangement with the County to enforce all health/safety issues with Fargo/Cass Public Health just like it's done in the city. Complaints for sewage, unhealthy living environments and other environmental concerns fall onto the Public Health. For Building permits and construction inspections and zoning or land use all fall on to the Fargo Planning and Codes office within in this ET area. The ET areas has representation via County Commission appointments on the Planning Commission so they have input.

Cass County has adopted the City's platting process so those areas up against the ET zone will be compatible when the growth of the city requires expansion of the ET and we then won't have disruptive subdivision layouts and zoning. Before this was adopted we had small cities like Prairie Rose/Frontier and Riley's Acres spring up and now we have to work around them on issues such as streets, fire protection and snow removal just to mention a few. Working with the County solves a lot of these problems. Cooperation with the governmental entities will solve the problem, not more studies.