

**2017 SENATE POLITICAL SUBDIVISIONS**

**SB 2257**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2257  
2/3/2017  
Job # 27870

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*MJ Wocken*

### Explanation or reason for introduction of bill/resolution:

Relating to extraterritorial zoning

### Minutes:

Written testimony #1 Senator Kannianen  
Written testimony #2 Brian Bittner  
Written testimony #3 Blake Crosby  
Written testimony # 3a Brad Gengler  
Written testimony # 3b Jim Gilmour  
Written testimony # 3c City of West Fargo  
Written testimony #4 Natalie Pierce  
Written testimony # 5 Kim Lee

**Chairman Burckhard:** opened the hearing on SB 2257. All senators were present.

**1.33-8.08 Senator Kannianen:** District 4, introduced the bill, is in favor of this bill. Written testimony #1.

**Chairman Burckhard:** So, you want to go back to 1975, where it is a ½ mile, 1mile and 2 miles?

**Senator Kannianen:** Yes. **Chairman Burckhard:** And would still the outer half the city has joint jurisdiction with the townships and county?

**Senator Kannianen:** Yes, and without any joint jurisdiction, just leave it. Right now essentially what you have is if the city chooses to exercise their extraterritorial zoning, they can see. **Chairman Burckhard:** So no joint jurisdiction, is that what you're saying?

**Senator Kannianen:** Yes, right now you can go from up to 2 miles, as an example the city of Bismarck can go up to 4 miles with the first 2 miles being their own jurisdiction and then the 2-4 mile outer circle is combined with joint jurisdiction with the county and so what I would like to propose say with an amendment, is basically leave it to the 2 mile radius would still be under just Bismarck's control with the outer radius not being under joint control but just left with the county or incorporated townships.

**Senator Anderson:** What specifically is the problem that you recognize that you're trying to solve with this legislation?

**Senator Kannianen:** Just to balance those property rights and just the idea of Planning and Zoning. I just want to be able to have those people vote for the people that are in control of their planning and zoning. Earlier, of course there was legislation to give voting rights in city elections to those that live in an ETA, and I agreed with the consensus of the committee that wasn't the right approach, but if this is left, then those rural residences are just allowed to vote for their county officers and the county officers today. Perhaps I mentioned more in the past, are able to engage in zoning practices that are say more advanced than county and zoning practices were in the past. I feel that is the best route to go for as many rural residences as we can.

**Senator Diane Larson:** So then if there is no joint jurisdiction or anything, then would the city for those 2 miles, then be responsible for road cleaning, and law enforcement and would they collect taxes, on that property? I am not exactly sure how that would work?

**Senator Kannianen:** It would just be left as it currently is as far as the first 2 miles. There is no joint jurisdiction now, in the first half of ETA and it would just be left as it is currently.

**Senator Diane Larson:** As far as taxes and services? **Senator Kannianen:** The ETA's would simply deal with planning and zoning and so, the taxes and services, so there aren't any city services outside the annexed city boundaries. That part would stay the same.

**12.44-15.25 Brian Bittner,** Burleigh County Commission. Written testimony #2.

**Chairman Burckhard:** Just to clarify, you said, subject to Century Code 1:35-02? **Mr. Brian Bittner:** replied, yes, this is existing law.

**Senator Anderson:** In the zoning business, I don't think anybody objects to when the city says, in the future we may annex this property, and so we would like to zone it so that you know the streets might match and those kinds of things. But, sometimes the city attempts I think, to make that rural area look like their city and so some of the building codes and so forth that they require are not necessarily something that the rural residences like because they don't live in the city yet. So, I think maybe that's where and correct me if I am wrong, your contention comes in, and if the county has some stipulations for those things then we ought to follow the county stipulations and not the cities because we're not really part of the city yet. If the city decides later to make us part of the city, then they have to accept us as we are in the rural area and move forward.

**16.55-19.53 Mr. Brian Bittner:** I can only speak about locally. There have been some comments about using zoning to make sure streets line up. However, if you look at that the Burleigh County map as I did, I circled there's between 30-40 examples of streets and street names not lining up in the cities extraterritorial jurisdiction. There is no example of streets not lining up in Burleigh County. Burleigh County is a high speed, high volume road maintenance operation. If you look at, the city map, the core of the city is what existed when I graduated from high school, the stuff that looks like somebody tipped over a spaghetti bowl, that's the extra-territorial jurisdiction. It is very difficult and costly and time consuming for Burleigh County to maintain these roads as compared to these straight nice roads out in the county. With all due respect to the city, in town they do fine with curb and gutter, and drainage

systems in town. However, they don't have an understanding of overland drainage and ground water tables out in the county.

**Senator Anderson:** So, Brian what you're saying, is these areas within the extraterritorial zoning authority of the city, but the city didn't solve those problems before the construction and so forth?

**Mr. Brian Bittner:** The city didn't know of the problems. There is no fault of theirs. They have a different view of things. Curb and gutter and surface drainage is totally different in town than it is out in the county.

**Senator Judy Lee:** I understand from the previous bill that we heard that there is now, what I thought sounded like a pretty workable arrangement between Bismarck and Burleigh County, as far as the shared responsibilities. So I am hearing you say is that is not working, or did some of this start before that all kind of shook out?

**Mr. Brian Bittner:** Yes, all of this started previous to this agreement. I do have a copy of the agreement here with me. Essentially what that agreement states, is that the city has sole jurisdiction from 0-2 and the county has jurisdiction from 2-4. So that is essentially what Senator Kannianen is proposing. That certainly does not address the citizen's concerns and we hear this according to staff, on a daily basis in Burleigh County. We hear about problems with the ETA area. But the citizens biggest concern has to do with representation. The citizens' complaint about essentially a jurisdiction without representation is valid. I believe strongly in elected representation from the citizen's. I also believe that the current ETA is a violation of the U.S. Constitution in the terms of equal representation and equal protection under the law. The citizens do not have equal protection under the law with the current ETA.

**Chairman Burckhard:** Do you guys have a good working relationship with Burleigh County and the city of Bismarck officials? Is there a pretty good working relationship?

**Mr. Brian Bittner:** No. the problem with the working relationship with the City of Bismarck has to do with the ETA. Burleigh County commission is unanimous in its opposition to the ETA and I think if the ETA went away, there would be an amazing change in cooperation.

**Senator Judy Lee:** I think that people from my years in the real estate business, people who move into rural subdivisions, want to move out so they don't have any rules. Yet, if you're in a neighborhood that has an acre of lot, or 5- acre lot, it still needs to be for the reasons you cited, there's the well and septic stuff. That is big in particular. So, they want to go out there and they don't pay for curb and gutter, and they don't want to pay for paved streets, but there is a difference between living in the country in a rural setting, and living in a rural subdivision where they just want to be outside the city limits so they are really closed in, and they can have their advantages of distance, to whatever it is they want to get to. But they feel like they are not paying all those nasty taxes and they don't want to pay specials and all of that. Although it is expense to maintain a well, as compared to being on a city water system, so you, kind of can't have it both ways either. There has got to be, you know this, it is not a new deal here, so they want representation but they don't want to pay for what their responsibilities might be if they actually were annexed into the city and made part of that representation. Without paying taxes to the city I don't think as we said before, I don't think

they should expect to be electing people. They elect you in the county to handle it and that's a burden for the county.

**Mr. Brian Bittner:** You're right! Except that they elect me and I can't do anything for them in the extraterritorial area. That's the problem. I want to point out, that Burleigh County has very few if any wells, it's all the rural water system here. With respect to septic systems, Burleigh County is one that has spearheaded an effort to create these community septic system, so that when the city gets. One of the key problems with rural subdivisions, is that what do you do in the city gets there with respect to those utilities and sewage. In Burleigh County now, we are moving towards these community septic systems so that infrastructure is already in place once the city gets there. Now, we're essentially just hooking up. People don't move out there for gravel roads. Burleigh county zoning ordinance does require paved roads in all new subdivisions. We don't allow gravel roads anymore cause sooner or later the citizens demand paving and their tired of the dust. I can't speak to anybody's concerns with taxes, but I do know that we utilize special assessment districts. We are required upgrades and different things.

**Senator Judy Lee:** Do you have any challenges with any special assessment districts for an unincorporated rural subdivision? There is a lot of unaware individuals who move out into a rural area because they like the idea of the bigger lots and some of those kinds of things, but then they are really frustrated when they don't get the services that are available to them in the city and I have friends who have been township officers forever and they've gotten lots of calls over the years about how come you're not blowing out our street. Well you're not a township anymore.

**Mr. Brian Bittner:** We have road maintenance agreements with all the townships. We maintain something along the order of 1500 miles of roads in Burleigh County. We have almost 500 rural subdivisions. One of the reasons this is such an issue between Bismarck and Burleigh County is simply because other cities in ND don't have the rural subdivisions that we do. However, that happened to begin with I am not sure. But with almost 500 of them it presents a big expensive challenge to us. We think that the county should be certainly more involved. This notion that a city has jurisdiction outside city limits doesn't recognize the realities that we have on the ground in Burleigh County.

**31.20-32. 28 Larry Syverson:** North Dakota Association of Township Officers. I support 2257, as does my association. We were a part of that long legislative history here at this party many times in previous sessions. We did come to a better settlement a few sessions back and that's the reason that we are able to meet in this committee room rather than the Bryn. Haugland Room which we did a few times as Senator Lee apparently remembers. That settlement did allow us to go forward with a lot more cooperation. But it did still leave a lot of people living under rules of the city that don't reside in. That is our objection to the current situation.

**Opposition:**

**32.46-37.03 Mr. Blake Crosby:** Executive Director, North Dakota League of Cities. Written testimony # 3; 3a. Brad Gengler from Grand Forks; 3b. Jim Gilmour from Fargo; 3c. West Fargo. The League stands in opposition to the changes proposed in 2257.

**37.47-42.06 Natalie Pierce**, Planning and Zoning Director of Morton County. I am here on behalf of the North Dakota Planning Association, in opposition to SB 2257. Written testimony # 4.

**Senator Anderson:** Do you have some suggestions about how we could make people in these extraterritorial areas more comfortable with their being equally represented on these issues?

**Ms. Natalie Pierce:** I know that in some areas when I was Planning and Zoning Commission for the city of Dickinson, they did have trouble finding representatives from the ETA area who are willing to serve on the Planning and Zoning Commission. In the current legislation there is the opportunity for cities under 5,000 to have one representative required to be on the Planning and Zoning Commission, two from the ETA for cities under 25,000, and 25,000 and more there should be 3 representatives from the ETA. I think it's incumbent on the city to advertise the fact that they really want representation from the ETA to get someone to be commenting on development applications that come through and ETA residents don't have the time, don't want to be involved. You can't make people want to be involved. That is certainly one thing to make sure that is well advertised and ETA residents are not just relying on their elected representatives, but themselves to participate.

**Senator Judy Lee:** Example cited (44.09- 45.30) This is a place where there is an advantage to having that connection, with the city because Morehead wasn't quite as close, but got closer, and yet that is not a fast growing area, but the people also knew the services that the city needed because of the big challenges they were having and that was just a dead market area for somebody who moved or whatever and they were going to have to really willing to put money aside so the next owner could develop the system when the city hook-up was available. My point is, this is an example of having that overlap, joint responsibilities is important. So listening to that, and I am just interested in knowing was that the only time it ever happened? It sure has in my part of the country and that's why some of that really serious engagement about things about water and sewer lines are really a big deal it seems to me, but I am anxious to hear from your part of the state what you see as being an issue or not there?

**Ms. Natalie Pierce:** That's a great question. Very often it does come down to septic and inadequate planning whether it happens from a county or whether it happens from a city, it happens in both entities sometimes. You're not going to correct that by adjusting the ETA boundary. Mistakes happen, oversights happen, and you know that is when jurisdictions just have to come up with solutions together, that is just good planning, good policy. The thing is though, like I talking about flexibility, sometimes it is the city that is more equipped, sometimes it is the county that has more resources to plan for those areas, to leave a wider berth for that planning to happen. We have a great relationship between Morton County and the City of Mandan. We plan together.

**50.13-55.13 Ms. Kim Lee:** Planning Manager, City of Bismarck, opposed to SB2257. Written testimony # 5.

**Senator Anderson:** What would be your assessment of why Burleigh County Commission and the City of Bismarck don't seem to get along as well as they might?

**Ms. Kim Lee:** I was here when went from 2 miles to 4 miles, I think that is when the issue started. I am not really sure what the issues are. I think the issues are perhaps more at the elected official level than at the staff level.

**Senator Anderson:** It seems to me like right now, the county has jurisdiction between 2 and 4 miles, so the city doesn't have that jurisdiction is that what I understand?

**Ms. Kim Lee:** We actually have negotiated agreement so that the city. What we did is the City of Bismarck used to provide planning services for Burleigh County. They developed and created their own department in January 2014, and in preparation of that, what we did is we sat down and drew basically some lines on a map. It doesn't follow exactly the 2 miles, it does actually have 4 miles along the highway 83 corridor, it has 4 miles in some other areas and is at 2 miles in a lot of locations. But what we did is we drew lines that followed section lines so that the people within that section were either in our jurisdiction or Burleigh County jurisdiction just to make it easier. We used to have lines that went through the middle of the townships, and in the middle of subdivisions. So the agreement that we have is actually a line on a map, it's not a 2 mile or 4 mile. It is actually a negotiated line where they have full jurisdiction out front of that line and we have full jurisdiction inside the line.

**Senator Anderson:** so, my question is, if Burleigh County has jurisdiction in that, let's say, 2-4 mile area there shouldn't be any contention there because they get to make up their minds, so the contention must come from closer to the city because now at least Burleigh County has jurisdiction in that, because you've agreed that that's okay.

**Ms. Kim Lee:** That is my perspective of that, yes.

**Chairman Burckhard** closed the hearing on SB2257.

# 2017 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2257  
2/9/2017  
Job # 28105

- Subcommittee  
 Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Related to extraterritorial zoning

### Minutes:

**Chairman Burckhard** asked the committee to discuss SB2257. All senators are present. As I recall we had Sen. Kannianen introduce the bill. Brian Bittner, Burleigh County Commission spoke in favor and Larry Syverson, ND Association of Townships. It was opposed by Blake Crobby, ND League of Cities, Natalie Pierce, Mandan/ Morton county, and Kim Lee, Planning Manager, city of Bismarck.

**Sen. J. Lee:** Having been here when we rewrote this last time, this is a step backwards in my opinion. There really is a need for the political subdivisions to collaborate obviously, and so I think that is very important but they all have to act like grownups in their conversations with one another, but I would really think that we would be making a backward move if we reduce these ET zoning areas by half, because that just isn't enough for appropriate planning. There does have to be planning done. I do oppose the bill.

**Sen. J. Dotzenrod:** The county commissioner from Burleigh County was up there, while I here listening to him he was talking about how in Bismarck the mismatch between the county area and the city is quite large. He references Mr. Bittner's description of Bismarck roads out in the ETA areas. We seem to have this problem more in the Bismarck area. Examples cited. It seems like they are not able to work it out, I don't know if it's just the personalities or if there is some history here to help explain it.

**Chairman Burckhard:** I asked him about the working relationship between the city of Bismarck and Burleigh County, and he said it is not good.

**Sen. D. Larson:** Did anybody get the email from Brian Bittner?

**Sen. Anderson:** One of the things you heard in the testimony was how the city of Bismarck seems to have these 500+ subdivisions. Brian's experience with that was when he wanted to build a garage or shop on his property, which he owns about 11 acres. The city of Bismarck because he's within that ETA area required him to have a subdivision, to sub divide the

property in order to do that which would've cost him about \$10,000. That might be a reason why Bismarck has too many subdivisions because they are requiring anybody who wants to do anything to design their subdivision for their property. Part of the animosity here is there really isn't no alternative to what the city wants because you can talk about these planning and zoning commissions and so forth, but there only advisory and the county people have a minority even on the planning and zoning commission. Then the city goes ahead and does whatever they want. I think the people around the city of Bismarck feel like the city with their fees are making lots of money, I think the figures were \$1.7 million that they bring in on that and they only spend about \$900,000 in doing the administration. Those people feel like the City of Bismarck is charging them things without a vote on it. I think that's the problem. We didn't hear anything from the Association of Counties relative to this issue.

**Chairman Burckhard:** Governmental units have to work together. Minot and the Ward County Commission have a pretty good working relationship.

**Sen. J. Lee:** A couple of observations: 1) if they are looking at, first on to add on to Sen. Anderson's comment, in our area we have to have 40 acres if they are going talk about a subdivision. You can't do a scattered lot development baloney which I think is going on here. Because of the values of the farm land there they don't want somebody to plop a house in the middle of a section and then that's all you get to do- 40 acres or get a variance 2) if there is an annexation discussion there is mediation. The law already allows for mediation. I cannot imagine that the political subdivisions could not look at the mediation process because we certainly use that after something doesn't get fixed. Mediation process is also another option.

**Sen. H. Anderson:** Your mediation issue comes in when they are annexing something. This is not an annexation, this is somebody who wants to build something on their property and has to get a variance from the city because they are in the ETA zone. It has nothing to do with annexation or mediation.

**Sen. J. Kannianen:** My concern is with the property owners. As far as introducing the bill, I am concerned less the political subs in their relationships and my focus is just with property owners. I read all the minutes from 1997-2009, different bills that made major adjustments to ETA's and I knew exactly what would be said, on both sides of the hearing and my purpose is just thinking about the property owners. I do have an amendment to propose as expressed in the hearing and so right now the way it sits with 2 miles, first half ring which is 2 miles for the biggest populations; strictly the city having ETA control; then the outer half ring which is, if they chose to exercise it, is joint control; the amendment would simple make it so they would still have there. Instead of cutting everything in half, so that they have joint control from 1-2 miles. It would allow them to have full control from 0-2 miles; but then that's it. After that you would have the county or township control and so that extra half of full control.

**Chairman Burckhard:** Who has the extra full control of the half?

**Sen. J. Kannianen:** The city. Essentially it would just drop off the outer ring where they could now have joint control. They would just leave it to the counties. The property owners outside of the city, when the city exercises and ETA, those are really rough numbers because obviously cities are a far from round but when you look at rough estimates where we are taking just a square mile of the three cities that I did, estimating what the ETA four miles

would be. I mean you're looking at a city that can exercise a 2-mile ETA that's more than double of the square mileage of what their current city is, it is a pretty good area.

**Chairman Burckhard:** Do we have a motion right now because we are getting close to our next hearing. Is that a motion?

**Sen. Kannianen: Move the amendments**

**Sen. J. Lee: 2<sup>nd</sup>**

**Discussion:**

**Sen. Lee,** tell me, the amendment is that you would have leave the 1, 2, 4 but that it would only be the city for the first ½ and only the township or counties for the next ½?

**Sen. Kannianen:** So in essence it would still cut the ETA in half but just give the city full control over the ETA, the full length of the ETA.

**Sen. J. Lee:** But you still want to reduce it to ½, 1 and 2 and get rid of 1,2, &4.

**Chairman Burckhard:** It has been moved and seconded.

**Sen. J. Lee:** I have to oppose the motion. I don't support at all going back to 1975 limits for ET zoning and I think that at the very least I would be willing to discuss having the current limits on ET zoning with the outside ring being joint but I am not willing to go any farther than that.

**Roll call vote: 3 Yea, 3 No, 0 Absent** (a tie, which means it failed)

**Sen. J. Lee: I move do not pass on 2257.**

**2<sup>nd</sup>. Sen. Dotzenrod**

Committee Discussion followed (14.51-16.12) Senator Dotzenrod

(16.15-17.22) Senator Kannianen

(17.21-18.39) Senator Judy Lee

**Chairman Burckhard:** For the do not pass motion you would vote yea, if opposed to the do not pass you would vote no.

**Roll call vote: 3 Yea, 3 No, 0 absent = tie, and fails as well**

**Sen. J. Lee:** Do you want to send it out "without committee recommendation", we can do that.

**Senator Judy Lee: I move that we send 2257 to the floor without committee recommendation.**

**2<sup>nd</sup> Senator Dotzenrod**

**Roll call vote: 6 Yea, 0 no, 0 absent**

**Carrier: Senator Burckhard**

## SB 2257 - Senate Political Subdivisions Committee

Jordan Kannianen - District 4 Senator

Chairman Burckhard and committee members, the purpose of this bill is to reduce the reach of extraterritorial zoning.

The legislative history runs deep on this issue. With extraterritorial zoning authority initially created by legislation in 1975, the details of the authority have been adjusted in numerous legislative assemblies since, most notably in 1997 when the original distances of ½, 1, and 2 miles were expanded to the present distances.

The current law allows cities to exercise extraterritorial zoning at the following distances:

- 1 mile, population fewer than 5,000
- 2 miles, population 5,000 and greater but fewer than 25,000
- 4 miles, population 25,000 and greater

The first half of the ETA is controlled by the city, and in the outer half the city has joint-jurisdiction with the township and/or county.

This bill proposes to cut those distances in half. I would like to propose an amendment to the bill, which would state that the joint-jurisdiction areas would be eliminated, essentially leaving cities with their current ETAs and leaving to the townships and counties the areas that are currently under joint-control. This would bring the extraterritorial zoning authority back to the original boundaries when first instituted in 1975, with cities having full control of ETAs at increments of ½ mile, 1 mile, and 2 miles, according to the population brackets.

Many North Dakota counties have come a long way in regards to planning and zoning issues, and this bill gives them more of the planning and zoning authority outside of city limits. Having these regulations enforced at the county level allows the rural residents to vote for the enforcers of the regulations.

The core issue here with ETAs is the attempt to balance property rights with city planning.

Much of life is about perspective. I've lived in the country nearly my entire life, so my concern lies with property rights. The city planners and other city representatives who are here today are concerned with the planning functions of their respective cities. They want the potential future conveniences and cost savings that can come with proper planning and zoning practices. I believe the balance is largely in favor of cities today.

The difference between the initial distances passed in 1975 and the current distances is in reality far greater than a twofold increase in terms of square miles.

Please give SB 2257, with its proposed amendments, a Do Pass recommendation.







**REPORT OF STANDING COMMITTEE**

**SB 2257: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2257 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2257

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SB 2257  
2.3.2017  
#1 2/2

**Stanley:** 1.83 square miles, approx. radius of .763 miles.

½ mile ETA gives 3.18 sq miles of ETA control;

1 mile ETA gives 4.75 sq miles additional control in outer ring (7.93 sq miles total ETA).

**Jamestown:** 12.87 square miles, approx. radius of 2.024 miles.

1 mile ETA gives 15.86 sq miles of ETA control;

2 mile ETA gives 22.14 sq miles additional control in outer ring (38 sq miles total ETA)

**Bismarck:** 31.23 square miles, approx.. radius of 3.15 miles.

2 mile ETA gives 52.1 sq miles of ETA control;

4 mile ETA gives 77.27 sq miles additional control in outer ring (129.37 sq miles total ETA)

CHAPTER 11-35  
REGIONAL PLANNING AND ZONING COMMISSIONS

SB 2257  
2.3.2017  
#2  
Bucari  
Bittner

1/2

**11-35-01. Regional commissions - Appointment - Powers.**

The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members, namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region must be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures must be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 28-34-01.

**11-35-02. Zoning of territory adjacent to cities.**

Until the organization of either a regional planning and zoning commission as provided in section 11-35-01 or township or county zoning commission pursuant to sections 58-03-11 through 58-03-15 and chapter 11-33, respectively, any city which shall determine to use zoning regulations shall have exclusive jurisdiction and power to zone over all land over which it has authority to control subdivisions and platting of land as provided in section 40-48-18.

SB 2257 AAO "Subject to 11-35-02"

## Problems with the ETA (4 mile Extra Territorial Line)

-Confusion over the jurisdictional line; property owners that live in the ETA will assume that since they are out in the country they should be able to follow Burleigh County's ordinances and regulations. This confusion extends into the private business sector; insurance companies, banks and credit unions, realtors, appraisers, contractors, developers, survivors, engineers, architects, etc.

-Property owners generally know if they live within city limits but are unaware of where an ETA line is located. Burleigh County Building/Planning/Zoning Dept. receives multiple calls every day on this even from the City of Bismarck's staff.

-Property owners overwhelming feel that their rights are not being represented since they are not allowed to vote for any one on the City Board (Commissioners, Mayor).

### -Jurisdictional authority by departments;

\*Fire Departments, Rural and City both terminate at the City limit line.

\*Sheriff's Department, Police Department and Emergency Services generally meet at the City Limit Line.

\*County Highway Department and City Public Works meet at the City Limit Line.

\*Environmental Health can go ½ mile past but typically stop at the City Limit Line.

\*City of Bismarck's adopted Building Code stops at the City Limit Line and the State Building Code takes over.

\*Tax Assessors and tax statements use the designated City Limit Line to define jurisdiction.

\*Other Departments and Agencies that adhere to the City Limit Line are; States Attorney, State Health Dept., State Electrical Board,

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January 3, 2017

Senate Political Subdivisions

SB 2257

Sen. Burckhard, Chair

For the record, I am Blake Crosby, Executive Director of the North Dakota League of Cities, representing the 357 incorporated cities across the state. Approximately 77% of the population of North Dakota lives in those cities.

The League stands in opposition to the changes proposed in SB 2257. There are experts on extra territorial zoning that have asked me to submit written testimony on their behalf and an expert or two will be following me but let me try to draw some geographical perspective. There are only 15-17 city blocks in a mile...not that far. Cutting it down to one-half of what the current statute allows, and this bill would actually reduce that joint jurisdiction to  $\frac{1}{4}$  mile,  $\frac{1}{2}$  mile and 1 mile, is not only length prohibitive for planning purposes but costly to the city to generate a new development plan that includes such a small area. Much development occurs in blocks of a half or full section as developers work to create different neighborhoods with their own personality and plan for districts such as commercial, multi-dwelling, industrial, single family residence, etc.

Remember that NDCC provides for shared jurisdiction...counties and townships have a voice as do the citizens living in those jurisdictions.

We should be embracing the fact that cities are planning to grow, not trying to penalize them.

On behalf of the North Dakota League of Cities I respectfully request a DO NOT PASS on SB 2257.

THANK YOU FOR YOUR TIME AND CONSIDERATION. As I mentioned there are experts following me that will answer your questions.

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**TESTIMONY ON SENATE BILL 2257**

**Senate Political Subdivisions Committee**

**Brad Gengler  
City of Grand Forks, ND**

**February 3, 2017**

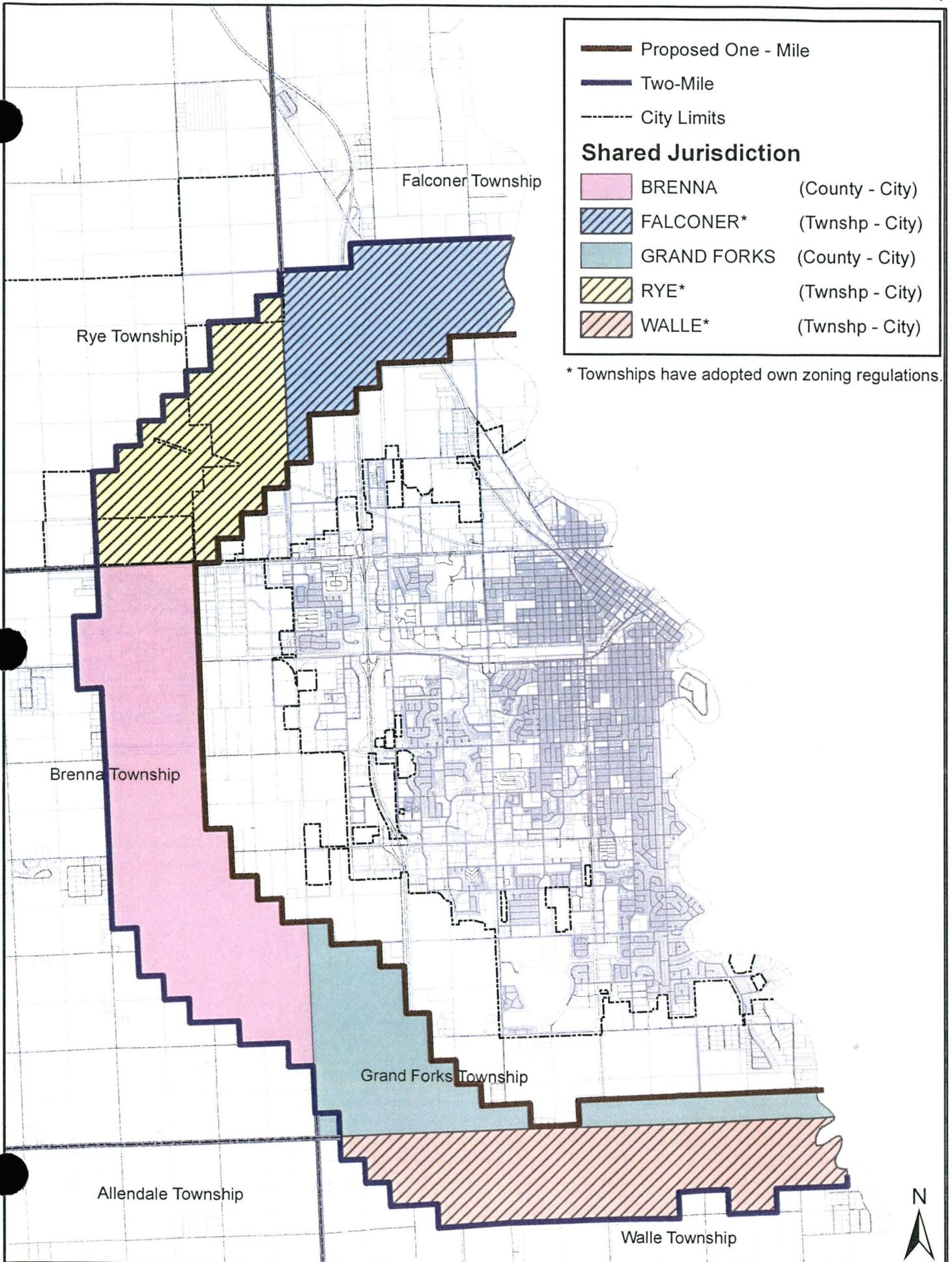
Mr. Chairman and members of the Committee, my name is Brad Gengler and I am the Planning and Community Development Director for the City of Grand Forks. I want to thank you for the opportunity to provide written testimony on Senate Bill 2257 and request your recommendation of a DO NOT PASS as it is currently proposed.

SB 2257 proposes to further reduce a city's ability to effectively exercise extraterritorial zoning authority (ETA) within a reasonable distance from corporate limits. The City of Grand Forks entered into a zoning and subdivision agreement with Grand Forks County in 2009. The agreement states the City has exclusive jurisdiction within two miles of corporate limits and the County exercises its authority from two to four miles. Townships that choose to adopt zoning authority within the two to four-mile boundary are excluded from the agreement and retain exclusive zoning authority. This type of agreement was a key compromise in past bills relating to ET zoning authority. I am not aware of any issues or complications arising from the implementation of this agreement. I would also like to note that existing ET laws require cities to have rural representatives as voting members of Planning and Zoning Commissions. Because Grand Forks has a population exceeding 25,000 there are three rural representatives on our Commission.

The City of Grand Forks is concerned about the impact SB 2257 could have on the one to two-mile area. As shown on the attached map, portions of five Townships fall within the City's two-mile boundary. Falconer, Rye, and Walle Townships exercise their own zoning authority beyond two-miles of the City, while Brenna Township defers to Grand Forks County to manage its zoning matters outside the two-mile area. Lastly, with the exception of a quarter-quarter section of land, the rest of Grand Forks Township is located within the existing two-mile jurisdiction of the City. If SB 2257 were to be enacted, the multiple overlapping of these jurisdictions could greatly hinder effective comprehensive planning for the orderly growth of the City as well as the individual Townships in the two-mile area.

It is for these reasons that I would respectfully ask for a DO NOT PASS recommendation of SB 2257.

Thank you for your consideration.



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Testimony Presented on SB 2257 to the  
Senate Political Subdivisions Committee  
Senator Randall A. Burckhard, Chairman

by

Jim Gilmour, Planning Director  
City of Fargo

February 3, 2017

Mr. Chairman and Members of the Committee,

I support continuing extra-territorial zoning as it currently exists.

Extra-territorial zoning is provided for in Chapter 40-47 of the North Dakota Century Code. The ETJ grants a city the authority to extend its zoning and subdivision regulations into areas adjacent to the city as prescribed in the statute.

The Century Code recognizes that a city must make adequate provisions for transportation, water, sewage, schools, parks, and other public requirements (Section 40-47-03); that the land outside a city's boundaries bears a relation to the planning of the municipality (Section 40-48-08); that there is an inter-relationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto (Section 40-51.2-02); and the importance of proper arrangement of streets in relation to other existing and planned streets (Section 40-48-20).

The ETJ facilitates these principles of the Century Code, as it allows a city to determine that infrastructure in areas, adjacent to the city into which the city may expand, would be contiguous with the city's existing infrastructure.

Currently, the Century Code provides that the outer half of the ETJ be a shared jurisdiction, while the inner half is the city's exclusive jurisdiction. For Fargo's four mile ETJ, for example, the area from two miles to four miles outside the city limits is a shared jurisdiction with adjacent jurisdictions (mainly Cass County), while the area from the city limits to two miles outside those limits is the city's exclusive jurisdiction.

Fargo now extends the zoning jurisdiction different distances based on the expected amount of development. With most of the growth to the south, it is very important to maintain exclusive zoning jurisdiction for two miles, and have the option to extend (jointly) to four miles if needed.

Fargo has been responsible with the zoning jurisdiction. The ETJ has not been extended to the full two and four mile areas to the north, as development of that area is not expected to occur as quickly as areas to the south.

It is often the case that development in a city's ETJ is proposed on a large scale—developments of a quarter section, half section, or more are often proposed, and the city and these proposed developments are best served if the city can have sufficient area within its own ETJ to manage particularly the infrastructure planning for continuity with existing city systems. Cutting in half the extent of a city's ETJ, and thus restricting the city to half again of that distance in its exclusive jurisdiction, significantly limits the city's ability to plan in accordance with the principles of the Century Code noted above.

Considering the scope of current development in many cities, the current extent of the extra-territorial zoning is essential to implement plans for the future of the City of Fargo and other cities in North Dakota.



**SB 2257**  
**City of West Fargo Testimony**

SB 2257 intends to substantially reduce the extraterritorial area (ETA) for planning and zoning authority of a city from 1 mile, 2 miles or 4 miles depending on city size to only ½ mile, 1 mile or 2 miles with the outer half being joint jurisdiction. This change in the statute would create several problems. The City of West Fargo would like to go on record as opposed to the bill for the following reasons:

- The effective ETA which would be under control of cities would be reduced to ¼ of what it is today.
- The existing ETA which is beyond what the scaled back version will be would come under the jurisdiction of the township and/or county. This would create nonconformities unless and until the new authority would develop zoning provisions that adequately accommodate the established uses in this area.
- If existing legal uses become nonconforming uses, they may experience difficulty in any refinancing or expansion plans, or if damaged by fire, flood or other disaster.
- The reduced ETA will create more difficulty for more rapidly growing cities to properly plan for orderly and compatible development patterns, particularly relating to streets and land uses.
- Cities that cannot adequately plan for orderly and compatible development patterns may resort to premature annexation policies resulting in property tax implications on property owners.
- The current extraterritorial statutes have been thought out well. The statutes have evolved over the years as a result of difficult experiences which townships, counties and cities have faced.
- Cities are generally better equipped to address urban type problems associated with development pressures adjacent to cities.
- West Fargo has experienced a growth pattern such that the extended ETA has been very helpful to properly plan for streets and compatible land uses, as well as administering floodplain regulations in flood prone areas. West Fargo's population grew by 96% during the 1970s, 22% during the 1980s, 22% during the 1990s, and 73% during the period 2000 to 2010. Since 2010 the City has grown by an estimated 34% (8,600 people). Much coordination has taken place with townships, Cass County, and City of Fargo. Please refer to the attachment which provides some insights to the City's growth, as well as problems

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City of West Fargo Testimony  
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that we have encountered in areas we have grown into that did not have proper planning.

- West Fargo has had a very good working relationship with Cass County and the five townships affected by the ETA. All ET area applications are sent to the County and/or townships for review. Any comments/recommendations are taken seriously when giving consideration to the application. Cass County and township officials have been in support of the City's current ETA and have been actively involved in planning efforts.

The City of West Fargo urges the Legislature to **defeat SB 2257**.

## SB 2257

### North Dakota Planning Association Testimony

SB 2257 intends to reduce by half, the distance that the extra-territorial area (ETA) of a municipality may extend outward from the corporate boundary. The North Dakota Planning Association (NDPA) opposes SB 2257 for the following reasons:

- Current ETA regulation has been given a great deal of consideration and has evolved over the years in response to experiences which townships, cities and counties have faced. ND Century Code currently allows municipalities the option of establishing an ETA, but does not require a municipality to establish an ETA. As such, ETAs can be established only where they are relevant and useful to the wider community. If a county wishes to relinquish joint control in the ETA to the municipality, there is a process to accomplish this as well. Given this flexibility, the NDPA holds that the current regulations are already adequate to accommodate the preferences of each local community in the state.
- It is imperative that good planning takes place to organize the growth of municipalities outside their corporate boundaries. In some cases the county may be most equipped to plan for this growth and in some cases a municipality may be most equipped to plan for this growth. The flexibility inherent in the existing ETA regulations allows for zoning authority to be assigned in the most effective manner. Reducing the ETA area will only serve to decrease this flexibility.
- The existing ETA distance allows cities a wider buffer to regulate uses that counties have little or no authority to regulate (such as feed lots).
- In instances where a fair amount of growth has occurred in the ETA, changing the entity that has zoning authority, by reducing the ET area, may result in non-conforming uses. Those uses will be in a legal limbo until the county adjusts its zoning code to accommodate these established uses. In the mean-time, non-conforming uses may experience difficulty refinancing, expanding and/or rebuilding.

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**TESTIMONY IN OPPOSITION TO SB2257  
SENATE POLITICAL SUBDIVISIONS COMMITTEE  
FEBRUARY 3, 2017 – 9:00AM**

**KIM L. LEE, AICP, PLANNING MANAGER, ON BEHALF OF THE CITY OF BISMARCK**

Good morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Kim Lee, Planning Manager, appearing on behalf of the City of Bismarck in opposition to Senate Bill 2257.

Extraterritorial zoning has changed over the forty plus years it has been allowed within our State. A city the size of Bismarck could have an extraterritorial area of 2 miles when the legislation was first enacted in 1975; the area expanded to 4 miles in 1997; and the current joint jurisdiction provisions in the outer half of the extraterritorial area was added in 2009.

The City of Bismarck relies on its extraterritorial jurisdiction to plan for future growth and limit uses within the extraterritorial area that are not compatible with urban development. In short, the extraterritorial area preserves our ability to grow in the future. As written, Senate Bill 2257 would reduce our extraterritorial jurisdiction back to what was originally allowed forty years ago – or even less than that if you take the joint jurisdiction provision into account.

Since exercising its extraterritorial jurisdiction in 1977, the City of Bismarck has continuously worked with the other adjacent jurisdictions. As required by State law, the City Planning and Zoning Commission has included three representatives from the extraterritorial area appointed by the Burleigh County Commission since 1977. In 1982, the City passed an ordinance to add a step in the approval process requiring the Burleigh County Commission to accept any right-of-way dedicated in the extraterritorial area, as they would be the entity that would be maintaining those roads on behalf of the townships. When the City extended its extraterritorial area in 2003, we added a County Commissioner as a permanent member of the Commission and a township supervisor sits as a member of the Planning and Zoning Commission when a request is located within an organized township. For subdivision plats within the extraterritorial area, we have notified the impacted township of the proposed action, if the township is organized, and have taken their recommendation into consideration when acting on the proposal. Several years ago we expanded that notification and input process to all items; if we haven't heard from the township, we do not take action on the request.

The City of Bismarck has also worked with adjacent jurisdictions on the establishment of negotiated extraterritorial boundaries. We have had negotiated boundaries with the City of Lincoln since 1979 (revised in 1982, 1989, 2006 and 2012), Apple Creek Township since 2010, Naughton Township since 2011 and Burleigh County since 2014. The negotiated extraterritorial agreements we have in place allows us to retain a greater extraterritorial area in locations that are our main "growth corridors" and less extraterritorial area in

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locations where other factors limit urban development potential. Our negotiated boundary with Burleigh County also addresses several other issues: we agreed to place complete sections into one jurisdiction's authority to make it less confusing for residents and administration less cumbersome for staff; the agreed upon boundary does not have to change with every annexation, but the agreement can be modified through mutual agreement; and maps available on our websites clearly show who has jurisdiction where. As our negotiated extraterritorial area with Burleigh County extends beyond 2 miles in many locations, we would lose our ability to plan for growth in those areas.

In addition, Burleigh County staff are involved in the review of storm water management plans within the extraterritorial area and our subdivision regulations require written concurrence from the Burleigh County Engineer before we approve storm water management plans for subdivisions within the extraterritorial area. We also include Burleigh County staff in our required pre-application meetings so that any issues or concerns can be identified up front.

I'd like to give you a personal example of why the extraterritorial area is so important to a city such as Bismarck. When I started working for the City of Bismarck in late 2000, the corporate limits extended north to 43<sup>rd</sup> Avenue NE, with a few exceptions. In the past 16 years, the City has added 6.6 square miles of area and the population has increased by 17,000 residents (in 2000, we had a population of 55,532 in 27.3 square miles; in 2016, we had a population of 72,545 in 33.9 square miles). Along the Highway 83 corridor, the corporate limits are now nearly 2 miles north of 43<sup>rd</sup> Avenue NE to 71<sup>st</sup> Avenue NE/ND Highway 1804. That is a significant amount of growth in such a short period of time and having the extraterritorial boundary we have in place has allowed that to occur.

In summary, the existing extraterritorial zoning provision has worked well for many years. We have negotiated agreements with adjacent jurisdictions that allow us to retain a greater extraterritorial area in locations where we need to protect our ability to grow and less extraterritorial area in locations where other factors limit urban development potential. The City of Bismarck has been prudent and thoughtful in planning for and regulating development within the extraterritorial area over the past forty years. On behalf of the City of Bismarck, I urge you to give Senate Bill 2257 a DO NOT PASS recommendation.