

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2200
(Senator Holmberg)
(Representatives Froseth, Poolman)

AN ACT to create and enact sections 40-51.2-02.1, 40-51.2-02.2, and 40-51.2-07.1 of the North Dakota Century Code, relating to annexation agreements, annexation of land in another city's extraterritorial zoning area, and the mediation of city annexations; to amend and reenact sections 40-51.2-05, 40-51.2-06, 40-51.2-07, 40-51.2-08, 40-51.2-09, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17 of the North Dakota Century Code, relating to the annexation of property to a city; and to repeal section 40-51.2-10 of the North Dakota Century Code, relating to the composition of the annexation review commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 40-51.2-02.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.1. Annexation agreements. The governing body of a city may enter a written annexation agreement with the governing body of another city regarding the annexation of property located within the extraterritorial zoning or subdivision regulation authority of the cities under chapter 40-47 or 40-48. An agreement is binding on the governing bodies of the cities for the term of the agreement unless the governing bodies agree otherwise or unless determined otherwise by an administrative law judge in accordance with this chapter. An agreement may not have a term greater than twenty years.

SECTION 2. Section 40-51.2-02.2 of the North Dakota Century Code is created and enacted as follows:

40-51.2-02.2. Annexation of land in the extraterritorial zoning or subdivision regulation authority of another city. A city may not annex land located within the extraterritorial zoning or subdivision regulation authority of another city by ordinance or resolution unless:

1. Written consent is received from the governing body of the other city; or
2. The annexation is ordered by an administrative law judge in accordance with this chapter.

SECTION 3. AMENDMENT. Section 40-51.2-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-05. Notice - Petition of owners and electors - Mediation.

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of ~~their~~ the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has ~~caused~~ mailed a notice of the time and place of consideration of the petition ~~to be mailed~~ to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. ~~Said~~ The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the governing body of the city must also mail the notice of the time and place of consideration of the petition to the governing body of the other city.

2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, 40-51.2-10, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

SECTION 4. AMENDMENT. Section 40-51.2-06 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-06. Petition of owners and electors - Annexation or exclusion - Classification of annexed agricultural lands for tax purposes. ~~If the governing body determines to annex said annexes the area, it shall do so by ordinance, a. When a copy of which with the ordinance and an accurate map of the annexed area, certified by the executive officer of the municipality city, shall be are filed and recorded with the county register of deeds, whereupon the annexation shall then be becomes effective. Annexation shall be An annexation is effective for the purpose of general taxation on and after the first day of the next February next ensuing; provided, however. However, the municipal corporation city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such before the annexation proceedings until such those lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in case of annexation.~~

SECTION 5. AMENDMENT. Section 40-51.2-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-07. Annexation by resolution of municipal corporation city. The governing body of any ~~municipality~~ city may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the ~~municipality~~ city shall adopt a resolution describing the property to be annexed.
2. The governing body of the ~~municipality~~ city shall ~~cause said~~ publish the resolution together with and a notice of the time and place ~~it~~ the governing body will meet to hear and determine the sufficiency of any written protests against ~~such~~ the proposed annexation ~~to be published~~ in the official newspaper once each week for two consecutive weeks. The governing body of the ~~municipality~~ city shall ~~cause mail a notice to be mailed~~ to the owner of each parcel of real property within the area to be annexed at the person's last known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of ~~such~~ the resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property may be annexed without the written consent of the state agency or department having control ~~thereof~~ of the property. The governing body of the ~~municipality~~ city, at its next meeting after the expiration of the time for filing ~~such~~ the protests, shall hear and determine the sufficiency ~~thereof~~ of the protests.
3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution ~~must be included within and shall become~~ becomes a part of the city, ~~and~~. When a copy of the resolution with and an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, ~~must be are~~ filed and recorded with the county register of deeds, ~~whereupon the~~ annexation shall ~~become becomes~~ effective. Annexation is effective for the purpose of general taxation on and after the first day of the next February next ensuing; provided, however. However, the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to ~~such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

If the owners of one-fourth or more of the territory proposed to be annexed protest, or if a city that has extraterritorial zoning or subdivision regulation authority over the area petitioned to be annexed protests, the city may seek annexation by petition to the annexation review commission either stop its pursuit of the annexation or submit the matter to a committee for mediation as hereinafter provided in section 40-51.2-07.1.

SECTION 6. Section 40-51.2-07.1 of the North Dakota Century Code is created and enacted as follows:

40-51.2-07.1. Mediation. The mediation committee must be comprised of a person appointed by the governor, representatives of the petitioners under section 40-51.2-03 or the protesters under section 40-51.2-07, the involved cities, counties, and townships, and any other parties having an interest in the proposed annexation. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. The meeting may be continued until a resolution agreeable to all parties is reached or the mediator determines that continued mediation is no longer worthwhile.

SECTION 7. AMENDMENT. Section 40-51.2-08 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-08. ~~Annexation by petition of municipal corporation~~ Petition to office of administrating hearings. ~~The If the governing body of any municipal corporation a city involved in the dispute is not satisfied with the result of the mediation, the governing body may petition the attorney general for annexation of any territory contiguous or adjacent to it~~ director of the office of administrative hearings to hear the matter. ~~The If the annexation was initiated under section 40-51.2-07, the petition shall set forth~~ must include an accurate map of the area sought to be annexed, ~~its a~~ description of the area, and the reasons for ~~its the~~ annexation.

SECTION 8. AMENDMENT. Section 40-51.2-09 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-09. ~~Annexation review commission~~ Administrative law judge to be constituted appointed - Hearing set. Upon receipt of such a petition, the ~~attorney general~~ director of the office of administrative hearings shall ~~issue an order to constitute an annexation review commission~~ appoint an administrative law judge to hear such the petition and he. If the annexation was initiated under section 40-51.2-07, the administrative law judge shall determine whether the annexing city has substantially complied with all of the procedural requirements in the annexation process. If substantial compliance has been met, or if the annexation was initiated under section 40-51.2-03, the administrative law judge shall designate a time and place at which the ~~commission shall meet to consider the~~ petition will be heard. The time of such the hearing shall be may not be less than thirty days after receipt of such the petition.

SECTION 9. AMENDMENT. Section 40-51.2-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-11. Notice required. At the time he the administrative law judge sets the time and place of hearing, the ~~chairman of such commission~~ administrative law judge shall direct the governing body of the annexing municipality city to cause:

1. Publish a notice of such the hearing and a copy of its the petition ~~to be published, if the annexation was initiated under section 40-51.2-07, at least once a week for two successive weeks in the official newspaper of such municipal corporation, to mail the city;~~
2. Mail a notice of the hearing and a copy of its the petition, if the annexation was initiated under section 40-51.2-07, to the owner of each parcel of real property in the area to be annexed at the person's last known mailing address, ~~and to serve;~~
3. Serve a copy of such the notice and petition upon the chairman of the governing body of the county and township, if organized, ~~wherein in which~~ the territory to be annexed lies; and

4. Serve a copy of the notice and petition upon the head of the governing body of any other city in whose extraterritorial zoning or subdivision regulation authority the land area petitioned to be annexed is located.

~~Such~~ The hearing must be held not less than thirty days after the first publication of ~~such~~ the notice. Proof of publication and service of the notice and petition ~~as required herein~~ must be filed with the ~~chairman of such commission prior to~~ administrative law judge before the time of ~~such~~ the hearing.

SECTION 10. AMENDMENT. Section 40-51.2-12 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-12. ~~Annexation review commission~~ Administrative law judge - Hearing. At the time of the hearing the ~~commission~~ administrative law judge shall hear all evidence with respect to ~~such~~ the annexation and it shall consider all studies, surveys, maps, data, reports, and other material prepared by any state or local governmental subdivision, or ~~planning or zoning commission in the performance of their functions.~~ At the hearing, the governor's appointee who mediated the meetings under section 40-51.2-07.1 shall provide information to the administrative law judge on the proposed annexation and any proposed resolutions or recommendations made by a majority of the representatives of the interested parties. Any resident of or person owning property or having any interest in the area proposed to be annexed and any elector of the annexing municipality city, or his ~~representatives~~ a representative of any such person, may appear at ~~such~~ the hearing and present evidence upon any matter to be determined by the ~~commission~~ administrative law judge. All proceedings at the hearing ~~and any continuances thereof shall~~ must be recorded but ~~the same~~ need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

SECTION 11. AMENDMENT. Section 40-51.2-13 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-13. Decision. ~~Upon the completion of the hearing~~

1. ~~In arriving at a decision, the commission administrative law judge shall determine if the annexation should be granted after considering and finding that from the evidence one or more of~~ consider the following factors ~~are present with respect to the proposed annexation which will constitute a more harmonious and compatible metropolitan community:~~
 1. a. The present uses and planned future uses or development of the area sought to be annexed;
 2. b. Whether a community of interest exists between the area sought to be annexed and is a part of the community of the annexing municipality city;
 3. c. The educational, recreational, civic, social, religious, industrial, commercial, or municipal city facilities and services made available by or in the annexing municipality city to any resident, business, industry, or employee of ~~such~~ the business or industry located in the area sought to be annexed;
 4. d. Whether any governmental services or facilities of the annexing municipality city are or can be made available to the area sought to be annexed;
 5. e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing municipal corporation city, and to the school districts and other political subdivisions affected ~~thereby~~;
 - f. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation, and the economic impact on the annexing city of a decision to deny the annexation;
 - g. Whether the area proposed to be annexed is in the extraterritorial zoning or subdivision regulation authority of another city; and
 - h. Any other factor determined to be relevant by the administrative law judge.

2. a. Based upon those factors, the administrative law judge may order the annexation if the administrative law judge finds that:
 - (1) The area proposed to be annexed is now, or is about to become, urban in character;
 - (2) City government in the area proposed to be annexed is required to protect the public health, safety, and welfare; or
 - (3) The annexation would be in the best interest of the area proposed to be annexed.
- b. The administrative law judge may deny the annexation if it appears that annexation of all or a part of the property to a different city would better serve the interests of the residents of the property.
3. ~~If a majority of the commission~~ administrative law judge is satisfied that the annexation should be granted, ~~it the administrative law judge shall determine the terms and conditions upon which of the annexation is to be had and shall enter an order granting the petition. In all cases, the commission administrative law judge shall set forth in writing its a decision, including findings of fact, its conclusions based thereon of law, and its decision, and an order. The decision must include the factors upon which the decision is based. The administrative law judge shall direct the governing body of the annexing city to mail a copy thereof of the decision to all parties to the annexation proceedings.~~
4. ~~The An order granting the petition shall set forth must include in detail all such the terms and conditions upon which the petition is granted and the effective date thereof of the petition. Such The annexing city shall file and record the order together with and an accurate map of the annexed area, certified by the executive officer of the municipality city, shall be filed and recorded in the office of the register of deeds of the county wherein in which the annexed territory is situated.~~

SECTION 12. AMENDMENT. Section 40-51.2-14 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-14. Powers of the ~~commission~~ administrative law judge - Decision - Terms. ~~The commission in making its decision shall balance the equities presented by the evidence and administrative law judge shall enter an order setting forth what it the administrative law judge deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity therewith with those terms and conditions. It shall have power~~ The administrative law judge may:

1. ~~To approve~~ Approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. ~~To determine~~ Determine the metes and bounds of the territory to be annexed and may include the same area or a smaller area than that described in the petition.
3. ~~To require~~ Require payment by the ~~municipal corporation~~ city of a sum determined by the ~~commission~~ administrative law judge payable to compensate for the value of public improvements acquired by the annexation proceedings and to require the assumption by the ~~municipal corporation~~ city of a pro rata share of any existing bonded indebtedness of any township from which territory is annexed.
4. Require payment by the city of a sum determined by the administrative law judge payable to compensate a water district for losses resulting from the annexation in accordance with section 61-35-26.

SECTION 13. AMENDMENT. Section 40-51.2-15 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-15. Review of determination of ~~commission~~ administrative law judge by certiorari. Within thirty days after receipt of the ~~commission's~~ administrative law judge's order, any interested party dissatisfied with the decision ~~made by the annexation review commission~~ may ~~make an application~~ apply to the district court for a writ of certiorari. The review upon ~~such~~ the writ shall ~~may~~ extend only to the determination of whether ~~such commission~~ the administrative law judge has ~~pursued its authority~~ acted regularly and has not exceeded ~~its~~ the administrative law judge's jurisdiction or abused ~~its~~ the administrative law judge's discretion under ~~the provisions of this chapter.~~

SECTION 14. AMENDMENT. Section 40-51.2-16 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-16. Effective date of annexation by ~~annexation review commission~~ administrative law judge - Classification of annexed agricultural lands for tax purposes. Territory annexed to a ~~municipality~~ under the provisions of this chapter, relating city pursuant to petition to ~~annexation review commission~~ the director of the office of administrative hearings, shall ~~be~~ is annexed as of the date of the order of the ~~commission~~ administrative law judge, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the ~~municipality~~ city, shall ~~must~~ be filed and recorded with the county register of deeds. Annexation shall ~~be~~ is effective for the purpose of general taxation on and after the first day of ~~the next~~ February ~~next ensuing; provided, however.~~ However, the ~~municipal corporation~~ city shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately ~~prior to such~~ before the annexation proceedings until ~~such~~ those lands are put to another use.

SECTION 15. AMENDMENT. Section 40-51.2-17 of the North Dakota Century Code is amended and reenacted as follows:

40-51.2-17. Cost of annexation. The costs of the annexation proceedings shall, and the costs for services rendered by an administrative law judge, must be paid to the office of administrative hearings by the ~~municipal corporation~~ instituting the proceeding and shall be ~~annexing~~ city. The costs of the annexation proceedings are the same as those allowed in any civil action.

SECTION 16. REPEAL. Section 40-51.2-10 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2200.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 88 Nays 6 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State