

Sixty-fifth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2326

Introduced by

Senator Laffen

1 A BILL for an Act to amend and reenact sections 11-09.1-05 and 40-05.1-06 of the North Dakota
2 Century Code, relating to the authority of home rule counties and cities to levy certain taxes.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **11-09.1-05. Powers.**

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

- 10 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,
11 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 12 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make
13 payments of its debts and expenses; ~~subject to the limitations of this section levy and~~
14 ~~collect property taxes, sales and use taxes, farm machinery gross receipts taxes,~~
15 ~~alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes,~~
16 ~~motor vehicle registration fees, and special assessments for benefits conferred, for its~~
17 ~~public and proprietary functions, activities, operations, undertakings, and~~
18 ~~improvements; contract debts, borrow money, issue bonds, warrants, and other~~
19 ~~evidences of indebtedness; establish charges for any county or other services to the~~
20 ~~extent authorized by state law; and establish debt and mill levy limitations.~~
- 21 3. To levy and collect property taxes and special assessments for benefits conferred, for
22 its public and proprietary functions, activities, operations, undertakings, and
23 improvements, and establish mill levy limitations. Notwithstanding any authority
24 granted under this chapter, all property must be assessed in a uniform manner as

1 prescribed by the state board of equalization and the state supervisor of assessments
2 and all taxable property must be taxed by the county at the same rate unless
3 otherwise provided by law. A charter or ordinance or act of a governing body of a
4 home rule county may not supersede any state law that determines what property or
5 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of
6 the governing body of a home rule county may not supersede section 11-11-55.1
7 relating to the sixty percent petition requirement for improvements and of section
8 40-22-18 relating to the barring proceeding for improvement projects. After
9 December 31, 2005,

10 4. To levy and collect sales and use taxes, farm machinery gross receipts taxes, and
11 alcoholic beverage gross receipts taxes, a county lodging tax, and a county restaurant
12 tax. Sales and use taxes and gross receipts taxes levied under this chapter:

- 13 a. Must conform in all respects with regard to the taxable or exempt status of items
14 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
15 at multiple rates with the exception of sales of fuel used to power motor vehicles,
16 aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,
17 or other fuels delivered by the seller or the retail sale or transfer of motor
18 vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
19 homes.
- 20 b. May not be newly imposed or changed except to be effective on the first day of a
21 calendar quarterly period after a minimum of ninety days' notice to the tax
22 commissioner or, for purchases from printed catalogs, on the first day of a
23 calendar quarter after a minimum of one hundred twenty days' notice to the
24 seller.
- 25 c. May not be limited to apply to less than the full value of the transaction or item as
26 determined for state sales and use tax, except for farm machinery gross receipts
27 tax purposes.
- 28 d. Must be subject to collection by the tax commissioner under an agreement under
29 section 57-01-02.1, with the exception of a county lodging or county restaurant
30 tax, and must be administered by the tax commissioner in accordance with the
31 relevant provisions of chapter 57-39.2, including reporting and paying

1 requirements, correction of errors, payment of refunds, and application of penalty
2 and interest.

3 After December 31, 2005, any portion of a charter or any portion of an ordinance or
4 act of a governing body of a home rule county passed pursuant to a charter which
5 does not conform to the requirements of this subsection is invalid to the extent that it
6 does not conform. The invalidity of a portion of a charter or ordinance or act of a
7 governing body of a home rule county because it does not conform to this subsection
8 does not affect the validity of any other portion of the charter or ordinance or act of a
9 governing body of a home rule county or the eligibility for a refund under section
10 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation
11 equipment, and farm machinery repair parts used exclusively for agricultural purposes,
12 or on alcoholic beverages, which were in effect on December 31, 2005, become gross
13 receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017,
14 may not allow for the collection and levy of any tax not otherwise specified under this
15 section.

16 ~~3-5.~~ Provide for county elected and appointed officers and employees, their selection,
17 powers, duties, qualifications, and compensation, and the terms of county appointed
18 officers and employees. However, after adoption of a home rule charter, a county
19 elected office may not be eliminated or combined with another office except upon
20 approval of a majority of the electors of the county voting upon the question at a
21 primary or general election or pursuant to the county officer combination, separation,
22 or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish
23 the term of office for which a current county officer was elected, redesignate that
24 elected office during that term as appointed, or reduce the salary of the office for that
25 term. This subsection does not authorize a county to redesignate the elected offices of
26 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

27 ~~4-6.~~ Provide for all matters pertaining to county elections, except as to qualifications of
28 electors.

29 ~~5-7.~~ Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil
30 and criminal penalties for violation of ordinances, resolutions, and regulations to carry
31 out its governmental and proprietary powers and to provide for public health, safety,

1 morals, and welfare. However, this subsection does not confer any authority to
2 regulate any industry or activity which is regulated by state law or by rules adopted by
3 a state agency.

4 ~~6-8.~~ Lay out or vacate public grounds, and provide through its governing body for the
5 construction, use, operation, designation, and regulation of a county road system.

6 ~~7-9.~~ Provide for zoning, planning, and subdivision of public or private property within the
7 county limits but outside the zoning authority of any city or organized township.

8 ~~8-10.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

9 ~~9-11.~~ Contract with and receive grants from any other governmental entity or agency, with
10 respect to any local, state, or federal program, project, or works.

11 The people of all counties coming within this chapter have the full right of self-government in all
12 matters within the powers enumerated in this chapter. The statutes of this state, so far as
13 applicable, continue to apply to counties, except as superseded by the charters of the counties
14 or by ordinances passed pursuant to the charters.

15 **SECTION 2. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **40-05.1-06. Powers.**

18 From and after the filing with the secretary of state of a charter framed and approved in
19 reasonable conformity with the provisions of this chapter, such city, and the citizens thereof,
20 shall, if included in the charter and implemented through ordinances, have the following powers
21 set out in this chapter:

22 1. To acquire, hold, operate, and dispose of property within or without the corporate
23 limits, and, subject to chapter 32-15, exercise the right of eminent domain for such
24 purposes.

25 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
26 make payment of its debts and expenses; ~~to levy and collect taxes, excises, fees,~~
27 ~~charges, and special assessments for benefits conferred, for its public and proprietary~~
28 ~~functions, activities, operations, undertakings, and improvements;~~ to contract debts,
29 borrow money, issue bonds, warrants, and other evidences of indebtedness; to
30 establish charges for any city or other services; and to establish debt ~~and mill levy~~
31 limitations.

1 3. To levy and collect property taxes and special assessments for benefits conferred, for
2 its public and proprietary functions, activities, operations, undertakings, and
3 improvements, and establish mill levy limitations. Notwithstanding any authority
4 granted under this chapter, all property must be assessed in a uniform manner as
5 prescribed by the state board of equalization and the state supervisor of assessments
6 and all taxable property must be taxed by the city at the same rate unless otherwise
7 provided by law. ~~The authority to levy taxes under this subsection does not include~~
8 ~~authority to impose income taxes.~~

9 ~~3.4.~~ To levy and collect excises, fees, charges, franchise and license taxes, sales and use
10 taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a
11 city lodging tax, and a city restaurant tax. For purposes of this section, any taxes
12 imposed under this section on farm machinery, farm irrigation equipment, and farm
13 machinery repair parts used exclusively for agricultural purposes, or on alcoholic
14 beverages, which were in effect on December 31, 2005, become gross receipts taxes
15 after December 31, 2005. After December 31, 2005, any portion of a charter or any
16 portion of an ordinance passed pursuant to a charter which does not conform to the
17 requirements of this section is invalid to the extent it does not conform. The invalidity
18 of a portion of a charter or ordinance because it does not conform with this subsection
19 does not affect the validity of any other portion of the charter or ordinance of the
20 eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1,
21 2017, may not allow for the collection and levy of any tax not otherwise specified
22 under this section. Sales and use taxes and gross receipts taxes levied under this
23 section:

- 24 a. Must conform in all respects with regard to the taxable or exempt status of items
25 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
26 at multiple rates with the exception of sales of manufactured homes or mobile
27 homes.
- 28 b. May not be newly imposed or changed except to be effective on the first day of a
29 calendar quarterly period after a minimum of ninety days' notice to the tax
30 commissioner or, for purchases from printed catalogs, on the first day of a

- 1 calendar quarter after a minimum of one hundred twenty days' notice to the
2 seller.
- 3 c. May not be limited to apply to less than the full value of the transaction or item as
4 determined for state sales and use tax purposes, except for farm machinery
5 gross receipts tax.
- 6 d. Must be subject to collection by the tax commissioner under an agreement under
7 section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and
8 must be administered by the tax commissioner in accordance with the relevant
9 provisions of chapter 57-39.2, including reporting and paying requirements,
10 correction of errors, payment of refunds, and application of penalty and interest.
- 11 5. To fix the fees, number, terms, conditions, duration, and manner of issuing and
12 revoking licenses in the exercise of its governmental police powers.
- 13 4.6. To provide for city officers, agencies, and employees, their selection, terms, powers,
14 duties, qualifications, and compensation. To provide for change, selection, or creation
15 of its form and structure of government, including its governing body, executive officer,
16 and city officers.
- 17 5.7. To provide for city courts, their jurisdiction and powers over ordinance violations,
18 duties, administration, and the selection, qualifications, and compensation of their
19 officers; however, the right of appeal from judgment of such courts shall not be in any
20 way affected.
- 21 6.8. To provide for all matters pertaining to city elections, except as to qualifications of
22 electors.
- 23 7.9. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
24 regulations to carry out its governmental and proprietary powers and to provide for
25 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 26 8.10. To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
27 operation, and regulation thereof.
- 28 9.11. To define offenses against private persons and property and the public health, safety,
29 morals, and welfare, and provide penalties for violations thereof.

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- 1 ~~40.12.~~ To engage in any utility, business, or enterprise permitted by the constitution or not
2 prohibited by statute or to grant and regulate franchises therefor to a private person,
3 firm, corporation, or limited liability company.
- 4 ~~41.13.~~ To provide for zoning, planning, and subdivision of public or private property within the
5 city limits. To provide for such zoning, planning, and subdivision of public or private
6 property outside the city limits as may be permitted by state law.
- 7 ~~42.~~ ~~To levy and collect franchise and license taxes for revenue purposes.~~
- 8 ~~43.14.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 9 ~~44.15.~~ To fix the boundary limits of said city and the annexation and deannexation of territory
10 adjacent to said city except that such power shall be subject to, and shall conform with
11 the state law made and provided.
- 12 ~~45.16.~~ To contract with and receive grants from any other governmental entity or agency, with
13 respect to any local, state, or federal program, project, or works.
- 14 ~~46.~~ ~~To impose registration fees on motor vehicles, farm machinery gross receipts taxes,~~
15 ~~alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any~~
16 ~~other taxes imposed by law. After December 31, 2005, sales and use taxes and gross~~
17 ~~receipts taxes levied under this chapter:~~
- 18 a. ~~Must conform in all respects with regard to the taxable or exempt status of items~~
19 ~~under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed~~
20 ~~at multiple rates with the exception of sales of fuel used to power motor vehicles,~~
21 ~~aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,~~
22 ~~or other fuels delivered by the seller or the retail sale or transfer of motor~~
23 ~~vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile~~
24 ~~homes.~~
- 25 b. ~~May not be newly imposed or changed except to be effective on the first day of a~~
26 ~~calendar quarterly period after a minimum of ninety days' notice to the tax~~
27 ~~commissioner or, for purchases from printed catalogs, on the first day of a~~
28 ~~calendar quarter after a minimum of one hundred twenty days' notice to the~~
29 ~~seller.~~

- 1 e. ~~May not be limited to apply to less than the full value of the transaction or item as~~
2 ~~determined for state sales and use tax purposes, except for farm machinery~~
3 ~~gross receipts tax.~~
- 4 d. ~~Must be subject to collection by the tax commissioner under an agreement under~~
5 ~~section 57-01-02.1 and must be administered by the tax commissioner in~~
6 ~~accordance with the relevant provisions of chapter 57-39.2, including reporting~~
7 ~~and paying requirements, correction of errors, payment of refunds, and~~
8 ~~application of penalty and interest.~~

9 It is the intention of this chapter to grant and confirm to the people of all cities coming within
10 its provisions the full right of self-government in both local and city matters within the powers
11 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall
12 continue to apply to home rule cities, except insofar as superseded by the charters of such
13 cities or by ordinance passed pursuant to such charters.

14 ~~After December 31, 2005, any portion of a charter or any portion of an ordinance passed~~
15 ~~pursuant to a charter which does not conform to the requirements of subsection 16 is invalid to~~
16 ~~the extent that it does not conform. The invalidity of a portion of a charter or ordinance because~~
17 ~~it does not conform to subsection 16 does not affect the validity of any other portion of the~~
18 ~~charter or ordinance or the eligibility for a refund under section 57-01-02.1. Any taxes imposed~~
19 ~~under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair~~
20 ~~parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect~~
21 ~~on December 31, 2005, become gross receipts taxes after December 31, 2005.~~