

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED HOUSE BILL NO. 1419**

Introduced by

Representatives Dockter, Bosch, Heinert, Klemin, Meier, Nathe

Senators Dever, Poolman

1 A BILL for an Act to create and enact a new section to chapter 40-22 of the North Dakota  
2 Century Code, relating to the authority of a city to levy an infrastructure fee in lieu of special  
3 assessments; and to amend and reenact sections 11-09.1-05, 11-11-55.1, 40-05.1-06, and  
4 40-23-21 of the North Dakota Century Code, relating to the authority of cities and counties to  
5 levy an infrastructure fee in lieu of special assessments and special assessment fund balances.

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

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

9 **11-09.1-05. Powers.**

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

- 13 1. Acquire, hold, operate, and dispose of property within or without the county limits, and,  
14 subject to chapter 32-15, exercise the right of eminent domain for those purposes.
- 15 2. Control its finances and fiscal affairs; appropriate money for its purposes, and make  
16 payments of its debts and expenses; contract debts, borrow money, issue bonds,  
17 warrants, and other evidences of indebtedness; establish charges for any county or  
18 other services to the extent authorized by state law; and establish debt limitations.
- 19 3. ~~To levy~~Levy and collect property taxes and special assessments for benefits  
20 conferred, for its public and proprietary functions, activities, operations, undertakings,  
21 and improvements, and establish mill levy limitations. Notwithstanding any authority  
22 granted under this chapter, all property must be assessed in a uniform manner as  
23 prescribed by the state board of equalization and the state supervisor of assessments  
24 and all taxable property must be taxed by the county at the same rate unless

1 otherwise provided by law. A charter or ordinance or act of a governing body of a  
2 home rule county may not supersede any state law that determines what property or  
3 acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of  
4 the governing body of a home rule county may not supersede section 11-11-55.1  
5 relating to the sixty percent petition requirement for improvements and of section  
6 40-22-18 relating to the barring proceeding for improvement projects.

7 4. To levy and collect an infrastructure fee. The fee must replace a general special  
8 assessment on all property for payment of infrastructure maintenance costs through a  
9 utility bill issued by the county. The money collected under this subsection may not be  
10 used for any purpose other than infrastructure maintenance costs. If a home rule  
11 county levies an infrastructure fee, the home rule county also may levy and collect  
12 green field special assessments. As used in this subsection:

13 a. "General special assessments" means special assessments levied for the  
14 purpose of maintaining existing roads and infrastructure and special  
15 assessments levied for the construction or repair of arterial roads and  
16 infrastructure that provide a benefit to the entire community.

17 b. "Green field special assessments" means special assessments levied for  
18 infrastructure costs associated with the development of agricultural or  
19 undeveloped property.

20 5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic  
21 beverage gross receipts taxes, a county lodging tax, and a county restaurant tax.

22 Sales and use taxes and gross receipts taxes levied under this chapter:

23 a. Must conform in all respects with regard to the taxable or exempt status of items  
24 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed  
25 at multiple rates with the exception of sales of manufactured homes or mobile  
26 homes.

27 b. May not be newly imposed or changed except to be effective on the first day of a  
28 calendar quarterly period after a minimum of ninety days' notice to the tax  
29 commissioner or, for purchases from printed catalogs, on the first day of a  
30 calendar quarter after a minimum of one hundred twenty days' notice to the  
31 seller.

- 1           c.    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, except for farm machinery gross receipts  
3                   tax purposes.
- 4           d.    Must be subject to collection by the tax commissioner under an agreement under  
5                   section 57-01-02.1, with the exception of a county lodging or county restaurant  
6                   tax, and must be administered by the tax commissioner in accordance with the  
7                   relevant provisions of chapter 57-39.2, including reporting and paying  
8                   requirements, correction of errors, payment of refunds, and application of penalty  
9                   and interest.

10           After December 31, 2005, any portion of a charter or any portion of an ordinance or  
11           act of a governing body of a home rule county passed pursuant to a charter which  
12           does not conform to the requirements of this subsection is invalid to the extent that it  
13           does not conform. The invalidity of a portion of a charter or ordinance or act of a  
14           governing body of a home rule county because it does not conform to this subsection  
15           does not affect the validity of any other portion of the charter or ordinance or act of a  
16           governing body of a home rule county or the eligibility for a refund under section  
17           57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation  
18           equipment, and farm machinery repair parts used exclusively for agricultural purposes,  
19           or on alcoholic beverages, which were in effect on December 31, 2005, become gross  
20           receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017,  
21           may not allow for the collection and levy of any tax not otherwise specified under this  
22           section.

23    5.6.    Provide for county elected and appointed officers and employees, their selection,  
24           powers, duties, qualifications, and compensation, and the terms of county appointed  
25           officers and employees. However, after adoption of a home rule charter, a county  
26           elected office may not be eliminated or combined with another office except upon  
27           approval of a majority of the electors of the county voting upon the question at a  
28           primary or general election or pursuant to the county officer combination, separation,  
29           or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish  
30           the term of office for which a current county officer was elected, redesignate that  
31           elected office during that term as appointed, or reduce the salary of the office for that

1 term. This subsection does not authorize a county to redesignate the elected offices of  
2 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

3 ~~6-7.~~ Provide for all matters pertaining to county elections, except as to qualifications of  
4 electors.

5 ~~7-8.~~ Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil  
6 and criminal penalties for violation of ordinances, resolutions, and regulations to carry  
7 out its governmental and proprietary powers and to provide for public health, safety,  
8 morals, and welfare. However, this subsection does not confer any authority to  
9 regulate any industry or activity which is regulated by state law or by rules adopted by  
10 a state agency.

11 ~~8-9.~~ Lay out or vacate public grounds, and provide through its governing body for the  
12 construction, use, operation, designation, and regulation of a county road system.

13 ~~9-10.~~ Provide for zoning, planning, and subdivision of public or private property within the  
14 county limits but outside the zoning authority of any city or organized township.

15 ~~10-11.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

16 ~~11-12.~~ Contract with and receive grants from any other governmental entity or agency, with  
17 respect to any local, state, or federal program, project, or works.

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

22 **SECTION 2. AMENDMENT.** Section 11-11-55.1 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **11-11-55.1. Petition or resolution for improvements - Levy of special assessments -**  
25 **Levy of infrastructure fee.**

- 26 1. The board of county commissioners of any county, by resolution or upon receipt of a  
27 petition of sixty percent of the landowners in a defined area, outside of the limits of any  
28 incorporated city, may install the petitioned improvements as benefit the defined area,  
29 provide for the financing of the improvements, and levy special assessments for the  
30 payment of all or part of the improvements within the defined area.

1       2. The board of county commissioners, by resolution or upon petition of sixty percent of  
2       the qualified electors who voted in the last general election in a defined area, may levy  
3       and collect an infrastructure fee in lieu of general special assessments on all  
4       residential and commercial county utility bills for payment of infrastructure  
5       maintenance costs. If a home rule county levies an infrastructure fee, the home rule  
6       county also may levy and collect green field special assessments.

7       3. In providing for the improvements, the county shall have the authority granted to  
8       municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and  
9       40-28, and the county shall comply with the provisions of those chapters in making the  
10      improvements. Whenever action is required of city officials in those chapters, the  
11      comparable county officials shall take the action.

12      4. As used in this section:

13      a. "General special assessments" means special assessments levied for the  
14      purpose of maintaining existing roads and infrastructure and special  
15      assessments levied for the construction or repair of arterial roads and  
16      infrastructure that provide a benefit to the entire community.

17      b. "Green field special assessments" means special assessments levied for  
18      infrastructure costs associated with the development of agricultural or  
19      undeveloped property.

20      **SECTION 3. AMENDMENT.** Section 40-05.1-06 of the North Dakota Century Code is  
21      amended and reenacted as follows:

22      **40-05.1-06. Powers.**

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

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

30      2. To control its finances and fiscal affairs; to appropriate money for its purposes, and  
31      make payment of its debts and expenses; to contract debts, borrow money, issue

1 bonds, warrants, and other evidences of indebtedness; to establish charges for any  
2 city or other services; and to establish debt limitations.

3 3. To levy and collect property taxes and special assessments for benefits conferred, for  
4 its public and proprietary functions, activities, operations, undertakings, and  
5 improvements, and establish mill levy limitations. Notwithstanding any authority  
6 granted under this chapter, all property must be assessed in a uniform manner as  
7 prescribed by the state board of equalization and the state supervisor of assessments  
8 and all taxable property must be taxed by the city at the same rate unless otherwise  
9 provided by law.

10 4. To levy and collect an infrastructure fee. The fee must replace a general special  
11 assessment on all property for payment of infrastructure maintenance costs through a  
12 utility bill issued by a municipality. The money collected under this subsection may not  
13 be used for any purpose other than infrastructure maintenance costs. If a home rule  
14 city levies an infrastructure fee, the home rule city also may levy and collect green field  
15 special assessments. As used in this subsection:

16 a. "General special assessments" means special assessments levied for the  
17 purpose of maintaining existing roads and infrastructure and special  
18 assessments levied for the construction or repair of arterial roads and  
19 infrastructure that provide a benefit to the entire community.

20 b. "Green field special assessments" means special assessments levied for  
21 infrastructure costs associated with the development of agricultural or  
22 undeveloped property.

23 5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use  
24 taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a  
25 city lodging tax, and a city restaurant tax. For purposes of this section, any taxes  
26 imposed under this section on farm machinery, farm irrigation equipment, and farm  
27 machinery repair parts used exclusively for agricultural purposes, or on alcoholic  
28 beverages, which were in effect on December 31, 2005, become gross receipts taxes  
29 after December 31, 2005. After December 31, 2005, any portion of a charter or any  
30 portion of an ordinance passed pursuant to a charter which does not conform to the  
31 requirements of this section is invalid to the extent it does not conform. The invalidity

1 of a portion of a charter or ordinance because it does not conform with this subsection  
2 does not affect the validity of any other portion of the charter or ordinance of the  
3 eligibility for a refund under section 57-01-02.1. Ordinances enacted after August 1,  
4 2017, may not allow for the collection and levy of any tax not otherwise specified  
5 under this section. Sales and use taxes and gross receipts taxes levied under this  
6 section:

- 7 a. Must conform in all respects with regard to the taxable or exempt status of items  
8 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed  
9 at multiple rates with the exception of sales of manufactured homes or mobile  
10 homes.  
11 b. May not be newly imposed or changed except to be effective on the first day of a  
12 calendar quarterly period after a minimum of ninety days' notice to the tax  
13 commissioner or, for purchases from printed catalogs, on the first day of a  
14 calendar quarter after a minimum of one hundred twenty days' notice to the  
15 seller.  
16 c. May not be limited to apply to less than the full value of the transaction or item as  
17 determined for state sales and use tax purposes, except for farm machinery  
18 gross receipts tax.  
19 d. Must be subject to collection by the tax commissioner under an agreement under  
20 section 57-01-02.1, with the exception of a city lodging or city restaurant tax, and  
21 must be administered by the tax commissioner in accordance with the relevant  
22 provisions of chapter 57-39.2, including reporting and paying requirements,  
23 correction of errors, payment of refunds, and application of penalty and interest.

24 ~~5-6.~~ To fix the fees, number, terms, conditions, duration, and manner of issuing and  
25 revoking licenses in the exercise of its governmental police powers.

26 ~~6-7.~~ To provide for city officers, agencies, and employees, their selection, terms, powers,  
27 duties, qualifications, and compensation. To provide for change, selection, or creation  
28 of its form and structure of government, including its governing body, executive officer,  
29 and city officers.

30 ~~7-8.~~ To provide for city courts, their jurisdiction and powers over ordinance violations,  
31 duties, administration, and the selection, qualifications, and compensation of their

1 officers; however, the right of appeal from judgment of such courts shall not be in any  
2 way affected.

3 ~~8-9.~~ To provide for all matters pertaining to city elections, except as to qualifications of  
4 electors.

5 ~~9-10.~~ To provide for the adoption, amendment, and repeal of ordinances, resolutions, and  
6 regulations to carry out its governmental and proprietary powers and to provide for  
7 public health, safety, morals, and welfare, and penalties for a violation thereof.

8 ~~40-11.~~ To lay out or vacate streets, alleys, and public grounds, and to provide for the use,  
9 operation, and regulation thereof.

10 ~~41-12.~~ To define offenses against private persons and property and the public health, safety,  
11 morals, and welfare, and provide penalties for violations thereof.

12 ~~42-13.~~ To engage in any utility, business, or enterprise permitted by the constitution or not  
13 prohibited by statute or to grant and regulate franchises therefor to a private person,  
14 firm, corporation, or limited liability company.

15 ~~43-14.~~ To provide for zoning, planning, and subdivision of public or private property within the  
16 city limits. To provide for such zoning, planning, and subdivision of public or private  
17 property outside the city limits as may be permitted by state law.

18 ~~44-15.~~ To exercise in the conduct of its affairs all powers usually exercised by a corporation.

19 ~~45-16.~~ To fix the boundary limits of said city and the annexation and deannexation of territory  
20 adjacent to said city except that such power shall be subject to, and shall conform with  
21 the state law made and provided.

22 ~~46-17.~~ To contract with and receive grants from any other governmental entity or agency, with  
23 respect to any local, state, or federal program, project, or works.

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

29 **SECTION 4.** A new section to chapter 40-22 of the North Dakota Century Code is created  
30 and enacted as follows:



1 **Power of municipality to defray expense of improvements - Infrastructure fee.**

2 1. Notwithstanding section 40-22-01, a municipality may levy and collect an infrastructure  
3 fee. The fee must replace a general special assessment on all property for payment of  
4 infrastructure maintenance costs through a utility bill issued by a municipality. The  
5 money collected under this subsection may not be used for any purpose other than  
6 infrastructure maintenance costs. If a municipality levies an infrastructure fee, the  
7 municipality also may levy and collect green field special assessments.

8 2. As used in this section:

9 a. "General special assessments" means special assessments levied for the  
10 purpose of maintaining existing roads and infrastructure and special  
11 assessments levied for the construction or repair of arterial roads and  
12 infrastructure that provide a benefit to the entire community.

13 b. "Green field special assessments" means special assessments levied for  
14 infrastructure costs associated with the development of agricultural or  
15 undeveloped property.

16 **SECTION 5. AMENDMENT.** Section 40-23-21 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **40-23-21. Use of collections of subsequent assessments.**

19 1. All collections of special assessments levied pursuant to sections 40-23-17 through  
20 40-23-21 shall be credited as received to the special fund maintained by the  
21 municipality for the payment of any outstanding special improvement warrants,  
22 refunding improvement bonds, general obligation bonds, or revenue bonds which were  
23 issued to finance the improvement for which the assessments were levied, or, if no  
24 such obligations are outstanding, to such fund as the governing body may direct.

25 2. If a governing body of a municipality levied and collected an infrastructure fee under  
26 section 4 of this Act, the funds generated by the fee must be used for the payment of  
27 any outstanding special improvement warrants, refunding improvement bonds, general  
28 obligation bonds, or revenue bonds issued to finance the improvement. The governing  
29 body of a municipality may not use funds generated by an infrastructure fee imposed  
30 after the effective date of this Act for the payment of any outstanding special  
31 improvement warrants, refunding improvement bonds, general obligation bonds, or

- 1 revenue bonds, issued before the effective date of this Act for the purpose of financing
- 2 green field special assessments, as defined in section 40-05.1-06.