

1999 HOUSE FINANCE AND TAXATION

HB 1318

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1318

House Finance and Taxation Committee

Conference Committee

Hearing Date January 20, 1999

Tape Number	Side A	Side B	Meter #
1	x		6.9
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

REP. MICK GROSZ, Introduced the bill. This bill does one simple thing. It takes out of the home rule charter, the ability for cities to levy or impose income taxes. The reason this was brought to our attention, was a bill was brought in to have cities have the authority to impose income taxes. We gave away some things years ago, with the home rule charter, and we probably shouldn't have. Many cities have imposed sales tax already. This is a good time for this bill, since no one has been given the authority to impose an income tax yet. This makes us make the decision today, are we going to allow cities to impose an income tax, or are we going to reserve that strictly for the state, as a source of revenue.

REP. WINRICH I haven't seen any specific bills yet, particularly in connection with funding, flood control projects in Grand Forks and Devils Lake and the Red River Valley, etc., there has

certainly been talk about adding a cent or half cent to the sales tax, consideration of raising funds at the state level, seems to be directed at sales tax. I have heard no talk of any proposals to fund some of these projects by raising the income tax, are you aware of any in that area?

REP. GROSZ No I am not, this bill doesn't have anything to do with funding anyone, it has to do with who should have the authority and who should have the authority to impose an income tax.

REP. WINRICH It seems that there is not a reluctance on the part of the state to raise the sales tax, as you suggested.

REP. GROSZ Wait for the vote, and you will see.

REP. RENNER How much of a sales tax levy can cities impose under home rule?

REP. GROSZ I am not sure, I believe there is no limit.

REP. RENNER Maybe we should consider amending this so that is capped as well.

REP. JOHN DORSO, DIST. 46, FARGO, Testified in support of the bill. As far as the general fund revenues, we are probably locked into the only opportunity, being income taxes. With home rule cities putting sales taxes on, it becomes less and less likely that legislators would pass a sales tax increase. There is another issue that needs to be addressed, and that is income tax, even for us in the general fund, is probably more of a moving target than our sales tax. It is harder to predict the revenue on income taxes and then also the administration of income taxes. Last session there was a bill in, that we maybe should change the way we compute income taxes. I think once you give home rule cities and counties an opportunity to impose an income tax, you are getting into problems, in case the state would want to change the way they compute income taxes. The legislature has to protect this opportunity.

SEN. JOEL HEITKAMP, Testified in support as one of the sponsors of the bill. My vision of tax is a three legged stool, you got property tax, income tax and sales tax. We are already letting that stool tilt quit a bit. The problem that we have as a state, is that we gave away the sales tax issue. In relation to Rep. Renner's question, four years ago, we tried to cap the cities a percent. The cities argued, they have no intention of raising beyond a percent. But, if the state can't lead, we need to be able to lead at a local level. I remember the city of Fargo, coming in and saying those very words. They no sooner went home, and they were voting on an issue to raise them. That failed, but since then it has gotten away. Here is your chance not to loose on the income tax issue.

DOUG CARPENTER, PRESIDENT OF THE GRAND FORKS CITY COUNCIL, Testified in opposition of the bill. See written testimony.

REP. WINRICH In order for a city to establish an income tax under the present law, would it not require an amendment of the home rule charter for that city?

DOUG CARPENTER Yes, we do not have the authority within our home rule charter to implement a local income tax. It would require a vote of the population of Grand Forks.

REP. WINRICH Could that pass by simple majority or does it require

DOUG CARPENTER It requires a simple majority of the voting public of Grand Forks.

REP. MICKELSON Do you mean the city itself proposed this bill or the city council proposed this bill?

DOUG CARPENTER We have not taken a poll, the city council proposed it.

CONNIE SPRYNCYNATYK, LEAGUE OF CITIES, Testified in opposition giving a history back to 1969 before home rule. The legislature decided to make local rule the best rule. The principle behind home rule is that the citizens make the decisions at the local level. If you think you get a lot of contacts as a legislator, let me tell what you hear when you are elected a local official, especially if you have anything to do with streets, garbage pickup, levying taxes locally. You are never more accessible when you are elected a local official. But that is O.K. because that is the purpose of home rule. When I hear the state legislature has given away the opportunity for state sales tax, I would like to say, think about whether you really had it anyway, because it has more than doubled the number. We are hearing bills about all of these exemptions to state sales tax, if you think you lost the ability to levy state sales tax, how about looking at the number of exemptions, people who are not paying. Think about lessening the exemptions. If you ask me whether I know of cities contemplating income tax, I know of none.

REP. RENNER If the city chose to implement an income tax, would that tax just be imposed on the residents of that city?

CONNIE SPRYNCYNATYK, I think it would have to be written in their home rule charter. It may not be practical for a city to do that.

REP. RENNER A lot of people in the country don't like the city imposed sales taxes because they don't have any say, they just get to pay.

CONNIE SPRYNCYNATYK I have heard that complaint. I would point out the fact, that the same would be true of the five cents sales tax we all pay on every purchase, except those that are specifically exempted. I did not have the opportunity myself to vote every time the legislature added another sales tax. We elect people to come to Bismarck every other year and make those

decisions for us. City sales tax is primarily used for infrastructure repair and replacement, which is something everybody coming to a city enjoys whether they live there or not, secondly, it is used for economic development, thirdly, there is some additional buy-down of property taxes, but usually that is by far the minority share.

REP. GROSZ I did ask John Walstad of the Legislative Council about counties, and he stated they do not have the authority anyway, so this can't be taken away from them.

REP. SCHMIDT Is there any concern in the rural communities, if these small towns went to home rule to collect sales tax, in the rural area, there are poor people with the farm economy, who don't pay any income tax, they would vote for this, and they don't pay any.

CONNIE SPRYNCYNATYK, If they live outside the jurisdiction, I don't know how they could vote. If they are already exempt from paying income tax, I don't see a local jurisdiction would have the authority to apply a form of income tax, that is not already submitted by state and federal income tax.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 1-20-99, Tape #2, Side A, Meter #31

REP. RENNER Made a motion for a DO PASS.

REP. WARNER Second the motion.

REP. WINRICH Was opposed to the do pass, he felt we were restricting the local jurisdictions from what they would be able to do.

MOTION CARRIED 12 Yes 2 No 1 Absent

REP. RENNER Was given the floor assignment.

Please type or use black pen to complete

Date 1-20-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1318

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Renner Seconded By Rep. Warner

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH		✓
RENNERFELDT	✓				
CLARK	✓				
FROELICH	✓				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER		✓			
MICKELSON	A				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 12 2
(Yes) (No)

Absent 1

Floor Assignment Rep. Renner

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
January 20, 1999 3:19 p.m.

Module No: HR-12-0920
Carrier: Renner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1318: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1318 was placed on the Eleventh order on the calendar.

1999 SENATE FINANCE AND TAXATION

HB 1318

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1318

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 2-9-99

Tape Number	Side A	Side B	Meter #
HB 1318		X	875-4765
Committee Clerk Signature <i>Shirley Wald</i>			

Minutes:

Sen Urlacher opened the hearing on HB 1318, A BILL RELATING TO REMOVAL OF AUTHORITY OF HOME RULE CITIES TO IMPOSE INCOME TAXES.

John Dorso - 1318 basically protects Legislature from loosing about the only general fund source income that we have any affect on. Sales tax issue has been passed by how many cities? The reason for HB 1318 is that if counties and cities were going to put income tax on it would be the same type of pressure not to. This bill needs to pass.

Sen Stenehjem - Cities or counties could implement tax, did you consider that?

John Dorso - I am more concerned on income tax.

Sen Heitkamp - Take a good look at this. More \$ in education. We need to find \$ that we pledged back home, and we need to find it. I am afraid we would lose income tax. When we

need to find more \$, we have a tool available. We tried to cap cities on a sales tax, came up short on that. This is a bill that we will need some day.

Repr. Glasheim - It would be foolish for any city to develop a new income tax, or dept. of income tax collection. I wish not to pass 1318. Attitude of limited govt. should not increase tax to provide more services. Home rule cities, going to other taxes. They are looking for other ways to be acceptable at the local level. Kill this bill. No city will put income tax on themselves.

Sen Stenehjem - Sales tax by cities, the local residents vote at the local level in just taxing themselves?

Repr Glasheim - Yes, they are taxing themselves.

Sen Stenehjem - In Grand Forks why didn't you exempt others that don't live there?

Sen Glasheim - It could be done.

Sen Christmann - Cities and counties reap the benefits. The rapid increase, and high property taxes. Property taxes haven't risen as fast.

Repr Glasheim - Grand Forks put it on and the impact would be 40% coming from outside the city. We are never sure if they will continue to shop there. Property tax is a tremendous burden. People don't feel burdened by income tax, but they do property tax.

Sen Christmann - Every time I hear this , I point this out. Property tax is raising, even though the study shows that isn't the case.

Repr Glasheim - It is one thing to have disposable income, you don't feel the burden. If you have set income you feel it.

Sen Stenehjem - People don't feel burdened by their income tax? I feel burdened.

Repr Glasheim - By the State income tax, it is extremely low.

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Senate Finance and Taxation Committee
Bill/Resolution Number Hb 1318
Hearing Date 2-9-99

Repr Grosz - I am in support of 1318. Chief sponsor.

Connie Spyntzatyk - Testimony submitted & attached. In opposition & recommends a Do Not Pass. Sales tax used for services and people do want the services. If you take away tools on local level, it could be very bad.

Sen Kroeplin - Cities found tax relief, are there any townships that get property tax relief?

Connie Spyntzatyk - Money to assist with services outside the city or broader area.

Sen Urlacher closed the hearing on 1318.

DISCUSSION MOTION MADE TO DO PASS BY SEN SCHOBINGER & SECONDED BY
SEN. KROEPLIN, 7 - 0 - 0, CARRIER SEN. KROEPLIN.

Date: 2-24-99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1318

Senate Senate Finance and Taxation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Schobinger Seconded By Sen. Kroepelin

Senators	Yes	No	Senators	Yes	No
SENATOR URLACHER	✓				
SENATOR CHRISTMANN	✓				
SENATOR SCHOBINGER	✓				
SENATOR STENEHJEM	✓				
SENATOR WARDNER	✓				
SENATOR KINNOIN	✓				
SENATOR KROEPLIN	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen Kroepelin

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

REPORT OF STANDING COMMITTEE (410)
February 25, 1999 10:37 a.m.

Module No: SR-34-3520
Carrier: Kroeplin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1318: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1318 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1318

BEFORE THE FIFTY-SIXTH LEGISLATIVE ASSEMBLY
OF THE STATE OF NORTH DAKOTA

Testimony Presented to the House Finance and Taxation Committee

January 20, 1999

House Bill No. 1318

Mr. Chairman and Committee Members, my name is Doug Carpenter. I am the President of the Grand Forks City Council and I appear before you today on behalf of the City of Grand Forks speaking in opposition to House Bill 1318.

Bill No. 1318 seeks to amend §40-05.1-06 of the *North Dakota Century Code* to expressly exclude any authority to impose a local income tax. The City's opposition to this bill is not based upon an issue of taxation but rather an issue concerning authority for home rule cities. The City of Grand Forks has already identified its proposed funding methods for its flood control project. Such methods do not include the consideration of a local income tax. The likelihood of any community, including Grand Forks, to obtain the necessary voter approval to impose a local income tax is extremely remote. However, legislative reduction of home rule authority is unwarranted. The City of Grand Forks opposes any infringement upon the home rule powers provided in Chapter 40-05.1 of the *North Dakota Century Code*.

The State of North Dakota has specifically provided the opportunities for a city to obtain home rule power through an election by its local residents. The purposes of home rule power are numerous but generally include:

1. Increased flexibility, improved administration, and efficient planned governmental responses to increased needs for local governmental services. It is in effect an opportunity for a city to control its own destiny through grass roots or organic law.
2. Remove burdens and obligations from the state legislators relating to purely local matters and local governments.
3. Provide a stimulus encouragement for increased citizen interest, participation and respect for local government.
4. Streamline governmental functions and adaptability.
5. Local control over local issues.

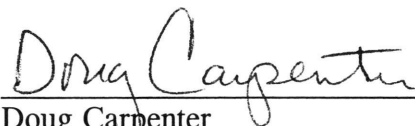
The proposed legislation infringes upon and is in contrary to the existing powers of home rule cities.

Local residents and constituents in a home rule city should be given the utmost authority in determining the direction and resolution of local issues. This is best accomplished through the adoption and amendment of a home rule charter which requires public notice and a public vote. The State of North Dakota has already provided for the existence of home rule cities. The legislature should not now be seeking to restrict and infringe upon the essence of home rule by removing from any possible consideration authority that may only be implemented through a public vote representing the will of the community's citizens.

Ordinances adopted pursuant to a voter approved home rule charter represents a true act of a grass roots, democratic system of government. The city's governing body has no authority to implement any ordinance without the approval of the home rule charter containing such authority. Conversely, the voters in a community have the opportunity to expressly remove or restrict a governing body's authority to adopt ordinances or to act in a certain manner. This grass roots authority reflects the principles of local control over local issues. The erosion of home rule authority merely transfers debate and action from the local community and their governing body to the state in Bismarck. This erosion and infringement is the exact ideological opposite to the principles supporting home rule communities. The adoption of a home rule charter by any community is an attempt to gain political, philosophical, and community autonomy. House Bill 1318 seeks to erode that autonomy.

CONCLUSION

The City of Grand Forks opposes House Bill 1318 because of its infringement and erosion of the municipal home rule powers existing under the North Dakota State Constitution and the *North Dakota Century Code*. The City of Grand Forks urges you to give House Bill 1318 a "do not pass" designation. Thank you.



Doug Carpenter
President, Grand Forks City Council
Grand Forks, North Dakota



North Dakota League of Cities

House Bill 1318

Finance and Taxation Committee

February 9, 1999

North Dakota League of Cities - Connie Sprynczynatyk, Executive Director

The North Dakota League of Cities appreciates the opportunity to offer testimony on this bill to remove a city's authority to enact an income tax under a home rule charter. We ask you to give a "do not pass" recommendation on HB 1318.

The Legislative Assembly passed the home rule authorizing legislation in 1969 and, as indicated in the attached summary of home rule, it was meant to be a tool cities and counties could use to bring their local government closest to the people. Because our state's constitution authorizes the legislature to enact statutes that spell out the various forms and functions of local government, home rule was viewed as a means for local citizens to determine their own destiny without running to the legislature every two years.

The move toward home rule was slow in the beginning but as attitudes changed and people expressed more interest in controlling their own affairs, the movement picked up steam. In the last decade, the number of cities with a home rule charter has more than doubled.

Of the seventy-four cities now operating under home rule, some charters are limited to collection and use of a city sales tax. The major cities are operating under full home rule charters and satisfaction seems high. Confidence in local elected officials is apparently high. Participation of the local voters is ensured because major issues, such as the local taxes collected, require a vote of the people.

Although I cannot tell you which—if any—city in the future intends to collect a city income tax, the League is adamantly opposed to *any intrusions on home rule authority*. It is fundamentally contrary to the principal behind home rule. The principal is brilliantly simple: People at the local level are best qualified to make their own decisions about government structure and functions.

On February 9, 1999, those of us here today have no idea what we will need in ten or twenty years. Home rule allows cities the flexibility to deal with issues and challenges, including finances, as they appear on the horizon. Please don't erode any further our local authority.

NORTH DAKOTA LEAGUE OF CITIES

A HANDBOOK ON HOME RULE



"GOVERNMENT CLOSEST TO THE PEOPLE"



Foreword
By Lieutenant Governor Lloyd Omdahl*

North Dakota cities have had home rule available for over twenty (20) year Fargo and Grand Forks were the first cities to launch home rule in 1970 and gradually other cities have decided to take advantage of local control over local affairs.

Since first serving as a member of the Grand Forks home rule charter commission in 1970, I have participated in numerous home rule discussions and hearings. All during that time, I have found the arguments for home rule remain the same and are as valid as ever. We have yet to encounter a single reason for opposing home rule.

Home rule brings local control and local control continues to be an unimpeachable principle for the use of powers available under home rule. Only a lack of confidence in local officials could bring one to oppose home rule. If we ever arrived at such a conclusion, we would have to accept the outrageous conclusions that democracy really doesn't work at the local level.

Over twenty (20) years of experience tell us that with new powers to gain and nothing to lose, home rule is still a wise choice for an eligible city in North Dakota.

**Omdahl served as chairman of the home rule charter commission for Grand Forks. The following information is patterned after a booklet published by the Bureau of Governmental Affairs at the University of North Dakota in 1971 when Omdahl served as its director.*

BENEFITS OF HOME RULE

Home rule allows those living within a city to govern themselves to a greater degree than has been the traditional situation. For over one hundred (100) years, a guide used to determine a city's right to make decisions is Dillon's Rule*. This rule stated...."(A) municipal corporation possesses and can exercise the following powers and no others. First those granted in expressed words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable...". The Legislative Assembly in North Dakota has not been as restrictive as Dillon's Rule indicates, and should not be, for cities are composed of citizens who voluntarily live together for the common good, and are not residents because of geographical lines. Therefore, logic should allow those same people as much autonomy, or self governance as possible without jeopardizing the safety and welfare of others. This can be accomplished through the use of a home rule charter.

**John Dillon was chief justice of the Iowa Supreme Court when this decision was rendered.*

QUESTIONS & ANSWERS ABOUT HOME RULE

What is Home Rule?

It is a state authorization to allow cities more opportunities to make decisions about those issues that affect them. Traditionally, because cities have been considered "creatures of the state", any conflict of authority between a city and the state has been decided in favor of the state. Therefore, home rule is more in keeping with the division of powers between cities and the state, and is more consistent with the partnership of governments.

When Was Home Rule Made Available To Cities?

The Legislative Assembly made home rule available to all cities with a population of 100 or over in 1969. Missouri, the first state to do so, adopted home rule in 1875.

How many cities in North Dakota have home rule and how many states offer that option to cities?

Among North Dakota cities with home rule are Berthold, Bismarck, Devils Lake, Dickinson, Fargo, Grafton, Grand Forks, Harvey, Jamestown, Langdon, Mandan, Minot, Riverdale and Wahpeton. A number of other cities are considering it. About forty (40) states offer home rule to their cities.

What is a home rule charter?

A home rule charter is a document that implements powers authorized by the state and contains the various provisions the charter commission and the governing board of a city are submitting to city electors for approval.

Will home rule change the form of city government?

No. The present form of government continues unless the city government and the voters approve another form of government. The opportunity for the voters of each city to decide the form of government is possible under home rule.

What happens to present offices and officers under home rule?

All offices, boards, commissions and officers continue in their present capacity unless the governing body reorganizes them.

What are the powers that may be used under home rule?

Home rule powers allowed by NDCC 40-05.1-06 may be found as part of the appendix to this booklet.

How can citizens be assured that home rule powers will be used for the good of the people?

The charter may include the right to refer ordinances. Otherwise, future governing boards may amend the ordinance, plus electors may vote against city officials who propose an unfavorable ordinance.

How can citizens, on the other hand, be assured that small interest groups won't refer critical ordinances?

If referral is allowed by council cities in their home rule charter, a referral petition should contain sufficient signatures to be a fairly strong indication of voter interest. In addition, a charter may contain the option of adopting emergency ordinances by the governing body. If so, they could remain in effect until voted upon. Some other provision could be in the charter to provide for emergency situations. (Cities with the commission form of government have always had the referral provision.)

Can all ordinances be referred?

Under the mayor-council form of government, no. Only those ordinances passed after the adoption of home rule may be referred. Ordinances enacted before home rule remain in effect.

May electors express their concern about ordinances in other than a formal manner?

Yes. The city governing body may submit ordinances or questions on public matters to voters for advisory opinions.

How will home rule affect local taxes?

Unless there is a specific provision or ordinance that allows the city to levy another tax, a sales tax for instance, the city cannot authorize another tax. Cities have voted on a sales tax as a separate issue from the home rule charter. It is important for city residents to know that forms of taxation other than the property tax may be approved, for a charter provides local citizens a chance to express their wishes as to how to pay for the services, products and resources they have requested.

Under home rule does the city have unlimited power to determine the level of property taxes?

Though a charter might allow an unlimited mill levy, no city thus far has included it as part of a home rule charter. If that should become something city residents want, that could be decided by an election.

How can a home rule charter be amended or repealed?

The charter may be amended or repealed by the governing body of a city or by a fifteen percent (15%) of the qualified electors voting in the last mayoral election. (See NDCC 40-05.1-02.04 which allows other possibilities.)

What restrictions apply to voting on home rule?

No proposal to amend or repeal a home rule charter should be submitted to the electorate more often than every two years.

PROCEDURES FOR IMPLEMENTING HOME RULE

A. *Preliminary Study Committee*

The governing body of a city may appoint a committee to determine whether a home rule charter will benefit the city sufficiently to spend the time and resources to enact such a charter. It's findings can then be submitted to the governing body for consideration.

B. *The Charter Commission*

Once it has been determined that home rule should be proposed, the governing body shall appoint five persons to become the Charter Commission, with one person designated as chairperson. The length of terms for charter commission members shall be four (4) years.

The Charter Commission should keep minutes of all its meetings for general purposes and for reference in case of litigation or to verify what took place. As part of the minutes, it may be good to include a Statement of Intent which clearly states the reason(s) for developing a home rule charter and to institute home rule in a city.

C. *Advisory Committee*

Many cities have found it helpful to appoint a volunteer advisory committee in addition to the Charter Commission. The purpose of the advisory committee is to serve as an extension of the Charter Commission to provide more communication among members of a community, to answer questions about home rule and to respond to objections or misunderstandings. The more ownership and involvement citizens have in their local government, the less chance there is for uninformed opposition or outright rejection of a good idea. An advisory committee should be large, enough to reflect the various categories of people living in a community: age, sex, denominations, educational institutions, businessmen, laborers and whichever categories that could be added. The point is that the advisory committee membership accurately reflects the demographics (population groups) in a community.

D. *Developing a Draft*

At its first meeting, the charter commission should agree on a preliminary draft for discussion purposes. This will greatly expedite the work of the Commission since it will provide officials and citizens with specifics over which differences can surface and be ironed out. Also, at its first meeting, it is advisable for the commission to confer with the members of the governing board and the advisory committee to obtain their viewpoints. Their support will be important to the success of the home rule effort.

E. *Public Hearings*

After copies of the first work have been agreed to and reproduced, they should be placed in general circulation. Publicity through the media should provide the outline of the proposal and copies should be available for the public at an appropriate municipal office or a convenient location in the municipality. Hearings can be set for dates which will allow time for the citizenry to review the proposed charters and to form opinions. Hearings should be attended by members of the charter commission for it is important for them to field all questions on home rule. By providing citizens with satisfactory answers by explaining provisions clearly, there is less chance of confusion and protest voting. People generally vote no on things they do not understand or on things for which they receive insufficient information and explanation.

F. Redrafting the Charter

With the comments offered by citizens and others, the charter commission should meet to consider recommendations for amendments. Sufficient time should be allowed to make the necessary changes and then to make sure that changes do not conflict with other provisions. Final review and endorsement by the advisory committee would help gain support for the finished charter.

G. Submitting the Charter

When the charter commission is satisfied that it has its charter in final form, it should present the charter to the governing body. The governing body must then make a motion to provide for funds for publication of the charter and a motion for submitting the charter to the electorate at a special election or in conjunction with a regular election to accept or reject the charter.

H. Commission to Frame the Question

The law provides that the home rule charter commission shall frame the question to be placed on the election ballot. This may be worded as follows: "Shall the Home Rule charter as published in the (name of newspaper) on (date & hour) prepared by the (city) charter commission for the City of (city) be adopted?" Yes _____ No _____

I. Publication of Charter

The full text of the charter must be published not less than sixty (60) days nor more than six (6) months before the election to approve the charter. Publication will be in the newspaper in the city for which the charter has been drafted or if one is not published there, in the official county newspaper. Cities with less than 1,000 population may distribute copies of the charter door-to-door and have them posted in prominent places in the city. While the law does not specifically say so, it can safely be assumed that the charter cannot be altered between the publication and the election.

J. Majority Vote Required

To secure passage, the charter must be approved by a simple majority of those voting on the question.

K. Filing the Charter

After the election, the charter must be filed with the Secretary of State, State Capitol, Bismarck, ND; the county clerk of the district court and the city auditor. To make the effective date more specific, a charter might state that it is to be filed by the governing board within ninety (90) days after the charter election.

TOPICS WHICH COULD BE INCLUDED IN A HOME RULE CHARTER

A. FORM OF GOVERNMENT

"To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers." Therefore, a city has the right to decide on its own form of government, its size and other conditions that may apply. (See Subsection 4, NDCC 40-05.1-06).

B. BUDGETING

Flexibility in meeting the financial demands placed on a city is a primary benefit. City officials have the authority to decide how tax dollars may be spent within an approved budget so that surpluses do not occur in some categories and deficiencies in others; thereby officials may consider total budget needs, as well as categorical needs. (See Subsection 2, NDCC 40-05.1-06)

C. TAXING POWER

Cities may include in a home rule charter the power to impose additional taxes and other types of revenues. However, it has been the practice of home rule cities to limit this power to voting on a one-cent sales tax, which may call for separate approval. Some cities that have the sales tax use that revenue for community-wide benefits and to assist other cities in their economic development. (See Subsection 2,3,12,16 NDCC 40-05.1-06)

D. FISCAL AUTHORITY

Powers identified in NDCC 50-051-06 not referred to previously include those involving control over property, ordinances, zoning, vacation of property, business involvement, boundary limits and annexation rights, as well as providing for the safety and general welfare of its constituents.

E. ELECTIONS

Cities may...."provide for city officers, agencies, and employees, their election, terms, powers, duties, qualifications and compensation and "to provide for all matters pertaining to city elections, except as to qualifications of electors. (See Subsections 4,6 NDCC 40-05.1-06)

F. EXTENDED AUTHORITY

Powers identified in NDCC 40-05,01-06 not referred to previously include those involving control over property, ordinances, zoning, vacation of property, business involvement, boundary limited and annexation rights, as well as providing for safety and general welfare of its constituents.

SAMPLE HOME RULE CHARTER

Article 1 - Incorporation

The inhabitants of the City of _____, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the "City of _____".

Article 2 - Governing Body to Exercise Powers

Subject to the limitations imposed by the state constitution, state law, and this charter, all powers of the city shall be vested in the elected governing body. The elected governing body shall enact local legislation, adopt budgets, determine policies, and prescribe the functions of government to be performed under this charter by the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

Article 3 - Powers of City

The city shall have all powers granted to municipal corporations by the constitution and laws of this state and by this charter, together with all the implied powers necessary to carry into execution all powers granted.

Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in the charter, shall be the following:

a. To acquire, hold, operate and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.

b. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that the mill levies ordered and mill levy limitations, provided that the mill levies ordered imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classification to that of the City of _____.

The governing body shall be permitted to promulgate the city budget without regard to the specific dedications of mill levies to specific purposes as long as the total of the budget is not more than the total amount of mills authorized to be levied by a city.

c. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.

d. To provide for city officers, agencies, and employees, their selection, terms, powers, qualifications and compensation.

e. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.

f. To provide for all matters pertaining to city elections, except as to qualifications of electors.

g. To provide for the adoption, amendment, and repeal of ordinances, resolution, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

h. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation and regulation there

i. To define offenses against private persons and property and the public health, safety, morals and welfare, and provide penalties for violations thereof.

j. To engage in any utility, business, or enterprise permitted by the Constitution or not prohibited by statute or to grant and regulate franchises therefore to a private person, firm or corporation, or limited liability company.

k. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.

l. To levy and collect franchise and license taxes for revenue purposes.

m. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

n. To fix the boundary limits of said city and the annexation and de-annexation of territory adjacent to said city except that such power shall be subject to, and shall conform with, the state law made and provided.

o. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state or federal program, project or works.

p. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law.

The enumeration of particular powers by this charter shall not be deemed to be exclusive, and in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the city shall have and may exercise all powers which under the construction and laws of this state, it would be competent for this charter specifically to enumerate.

Article 4 - Referendum of Ordinances (An Option)

The citizens of _____ shall have the right to refer ordinances. Qualified city electors at least equal in number to fifteen percent (15%) of the number of electors voting in the City for office of governor in the last election may, by the referendum petition, suspend the operation of any ordinance enacted by the governing body, except emergency ordinances approved by at least two-thirds of all members of the governing body and except those ordinances implementing public projects upon which an election or a referendum has already been held pursuant to law or this charter, or which provide for meeting obligations of bonded indebtedness incurred by a prior ordinance or a prior election or referendum. An emergency ordinance shall contain a clause declaring an emergency. The filing of referendum petitions against one or more items, sections or parts of any ordinance, shall not prevent the remainder from going into effect. Referendum petitions shall be filed with the city auditor not later than thirty (30) days after adoption of the ordinance.

Each ordinance referred to the electors shall be placed upon the ballot by the city auditor at the next municipal election occurring thirty (30) days after the filing of sufficient petitions, or at a special election called by the governing body, whichever shall occur first.

If a referendum petition is filed against an emergency ordinance such ordinance shall be in effect until voted upon by the electors. And if it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed as of the tenth day after the election.

The city auditor shall pass upon each petition, and if he finds it insufficient, he shall notify the "Committee for the Petitioners" and allow five (5) days for correction or amendment.

Each petition shall have printed thereon: "Referral of City Ordinance _____, providing for _____" and shall accurately identify and summarize the true nature of the ordinance, or portion of ordinance, being referred. In addition, each petition shall have listed the names of three electors who shall constitute the "Committee for the Petitioners" and who shall represent and act for the petitioners. At the bottom of each petition, the circulator of that particular petition shall sign an affidavit affirming that the signers thereto are known to him to be qualified electors of the city.

Article 5 - Referendum by Governing Body (An Option-see Appendix)

Before adopting ordinances the governing body may on its own motion submit questions to the electorate for an advisory vote of the people at any city-wide election specified by the governing body. If a question is submitted in the form of a proposed ordinance and it is approved by a majority of the votes cast thereon, and the governing body thereafter adopts the ordinance within six months of such vote, such ordinance shall not be subject to referral by petition.

Article 6 - Separability Clause

If any section or part of section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

Article 7 - Plenary and Implied Powers of the Governing Body

The governing body shall have plenary power to enact and make all proper and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted in this charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated and maintained in the city, and thereby project and safeguard the rights, interests, safety, morality, health and welfare of the city and its inhabitants.

Article 8 - Succession in Government

Section 1 - Rights of officers and employees preserved.

Nothing in this charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the city or of any office, department or agency existing at the time when this charter shall take effect and not inconsistent with the provisions of this charter in relation to the personnel, appointment, removal, pension and retirement rights, civil rights or any other rights or privileges of officers or employees of the city or any office, department or agency.

Section 2 - Continuance of present officers

All persons holding executive and administrative office at the time this charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the governing board for the performance of such duties in some other manner or the discontinuance of such office.

Section 3 - Continuance of present offices, departments or agencies

Any office, department, or agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other matters within the scope of its regular powers and duties until such office, department or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department or agency of the city by the laws of this state shall, if such office, department or agency be abolished by this charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the governing body.

Section 4 - Continuance of appointive boards, authorities, and commissions

All appointive boards, authorities and commissions, heretofore existing shall continue and shall exercise such powers and duties as were granted them until such boards, authorities, and commissions shall be changed or abolished by the governing body.

Section 5 - Continuance of contracts

All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect.

Section 6 - Pending actions and proceedings

The adoption of this charter shall not abate or otherwise affect any action or proceeding civil or criminal, pending when it takes full effect, brought by or against the city or any office, department, agency or officer thereof.

Section 7 - Ordinances to remain in force

All ordinances, resolutions and regulations of the city in force at the time of this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until the same shall be duly amended or repealed.

Section 8 - Inauguration of government under this charter

If a majority of the qualified electors of the city voting on the questions, vote to ratify this charter, the provisions of this charter shall go into effect upon the filing of the charter by the governing body with the secretary of state, the clerk of the district court and the office of the city auditor, within ninety (90) days. (Number of days is an option-See appendix)

Article 9 - Changing the Form of Government

changes in the form of government may be proposed on motion of the governing body or may be proposed by petitions bearing the signatures of qualified city electors equal to fifteen percent (15%) of those voting for the office of governor in the last election. Proposals for changing the form of government shall be voted upon at a special election called by the governing body or at the next first municipal election, which ever shall occur first, provided that at least thirty (30) days have passed after the motion of the governing board or the filing of petitions with the city auditor. (Percents and number of days are options-see Appendix)

Article 10 - Construction

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this charter.

Article 11 - Method of Amendment and Repeal

This charter may be amended or repealed as provided by Section 40-05,1-07 of the North Dakota Century Code and acts amendatory thereto.

CHAPTER 40-05.1

HOME RULE IN CITIES

Section	Section
40-05.1-00.1. Definitions.	40-05.1-06. Powers.
40-05.1-02. Methods of proposing home rule charter.	40-05.1-13. Vested property — Claims for relief — Actions saved.

40-05.1-00.1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "City officers" means the elected and appointed officers of the city and includes the governing body of the city and its members.
2. "Executive officer" means the chief officer in whom resides the power to execute the laws of the city.
3. "Governing body" means the body which performs the legislative functions of the city.

40-05.1-01. Enabling clause. Any city with a population of one hundred or more persons as determined by the last federal census and desiring to avail itself of the provisions of this chapter may proceed to frame, adopt, amend, or repeal home rule charters as herein provided in this chapter.

40-05.1-02. Methods of proposing home rule charter. The governing body of any city may on its own motion cause a home rule charter to be framed and submitted for adoption to the qualified electors of the city in the manner provided in this chapter, or such proposal may be made in a petition filed with the governing body and signed by not less than fifteen percent of the qualified electors of the city voting in the last city election.

40-05.1-03. Charter commission — Membership — Preparation and submission of charter — Compensation and expenses — Publication or distribution. Where proceedings have been initiated for a home rule charter, the governing body of the city shall appoint a charter commission composed of five members to frame such charter. The chairman of the charter commission shall be designated by the governing body and shall be a charter commission member. Compensation and expenses of commission members shall be as determined by the governing body. The governing body may furnish the charter commission with office space, clerical help, legal and other assistance, and supplies, and may appropriate and pay for same out of its general funds. The commission shall prepare and submit the charter within one year after appointment. The proposed charter shall then be published once in the city's official newspaper as provided in section 40-01-09. However, cities with a population of one thousand or less may, in lieu of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city. In the event a city does not publish the charter in a newspaper, it must still publish a notice of the election.

40-05.1-04. Submission of charter to electors. Not earlier than sixty days nor later than six months after such publication or distribution, the proposed charter shall be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any primary or general election that is to be held within such period of time, or at a special city election held concurrently with any primary or general election.

40-05.1-05. Ratification by majority vote — Supersession of existing charter and state laws in conflict therewith — Filing of copies of new charter. If a majority of the qualified voters voting on the charter at the election shall vote in favor of the home rule charter it shall be deemed to be ratified and shall become the organic law of such city, and extend to all its local and city matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes. One copy of the charter so ratified and approved shall be filed with the secretary of state, one with the clerk of district court for the county in which the city is located, and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

40-05.1-06. Powers. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation. To provide for change, selection, or creation of its form and structure of government including its governing body, executive officer, and city officers.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.

8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, or corporation.
11. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
12. To levy and collect franchise and license taxes for revenue purposes.
13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.
16. To impose registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law.

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

40-05.1-07. **Amendment or repeal.** The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner provided in section 40-05.1-02 and section 40-05.1-04 for the adoption of such charter. Amendments may be proposed by the governing body of the city or by petition of the number of electors provided in section 40-05.1-02 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of such amendments by a majority vote of electors voting at the election. A proposal to repeal a home rule charter that has been adopted shall likewise be submitted to the electors of the city as set forth in this section.

40-05.1-08. **Commission — Terms of office — Vacancies.** The terms of office of the members of the charter commission shall be four years. Any vacancy on said commission shall be filled by the governing body of the city.

40-05.1-09. Restriction on proposals to amend or repeal. Any proposal to amend or repeal home rule charters shall not be submitted to the electorate more often than every two years.

40-05.1-10. Manner of calling and holding elections. The elections provided for in this chapter shall be called and held in the same manner as is provided for the calling and holding of city elections except that all qualified voters of the city shall be eligible to vote at such elections and the form of ballot shall be prescribed by the charter commission so that the voter may signify whether he is for or against the proposed home rule charter or the amendment or repeal, as the case may be.

40-05.1-11. Effect of amendment or repeal on salary or term of office. Repeal of a home rule charter shall cause the city affected by such repeal to revert to the form of government of such city immediately preceding adoption of the home rule charter and where positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the city reverts upon repeal, such elected officials shall continue to exercise the authority of such position for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. No amendment of a home rule charter shall shorten the term for which any official was elected or reduce the salary of his office for that term.

40-05.1-12. Former powers preserved. All powers heretofore granted any city by general law are hereby preserved to each home rule city, respectively, and the powers so conferred upon said cities by general law, are hereby granted to home rule cities.

40-05.1-13. Vested property — Claims for relief — Actions saved. The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, claims for relief, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such claims for relief, claims, or demands vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment theretofore levied under any law or charter for the purpose of public improvements, nor affect any right of any contract or obligation existing between the city and any person, firm, or corporation for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.