

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED 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. The
21 authority to levy taxes does not include the authority to impose any other tax except as
22 specifically authorized under this section. Notwithstanding any authority granted under
23 this chapter, all property must be assessed in a uniform manner as prescribed by the
24 state board of equalization and the state supervisor of assessments and all taxable

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

8 3. Impose sales and use taxes, farm machinery gross receipts taxes, and alcoholic
9 beverage gross receipts taxes. Sales and use taxes and gross receipts taxes levied
10 under this chapter:

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

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

12 ~~3.4.~~ Provide for county elected and appointed officers and employees, their selection,
13 powers, duties, qualifications, and compensation, and the terms of county appointed
14 officers and employees. However, after adoption of a home rule charter, a county
15 elected office may not be eliminated or combined with another office except upon
16 approval of a majority of the electors of the county voting upon the question at a
17 primary or general election or pursuant to the county officer combination, separation,
18 or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish
19 the term of office for which a current county officer was elected, redesignate that
20 elected office during that term as appointed, or reduce the salary of the office for that
21 term. This subsection does not authorize a county to redesignate the elected offices of
22 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

23 ~~4.5.~~ Provide for all matters pertaining to county elections, except as to qualifications of
24 electors.

25 ~~5.6.~~ Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil
26 and criminal penalties for violation of ordinances, resolutions, and regulations to carry
27 out its governmental and proprietary powers and to provide for public health, safety,
28 morals, and welfare. However, this subsection does not confer any authority to
29 regulate any industry or activity which is regulated by state law or by rules adopted by
30 a state agency.

1 ~~6-7.~~ Lay out or vacate public grounds, and provide through its governing body for the
2 construction, use, operation, designation, and regulation of a county road system.

3 ~~7-8.~~ Provide for zoning, planning, and subdivision of public or private property within the
4 county limits but outside the zoning authority of any city or organized township.

5 ~~8-9.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

6 ~~9-10.~~ Contract with and receive grants from any other governmental entity or agency, with
7 respect to any local, state, or federal program, project, or works.

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

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

14 **40-05.1-06. Powers.**

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

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

22 2. To control its finances and fiscal affairs; to appropriate money for its purposes, and
23 make payment of its debts and expenses; to levy and collect taxes, excises, fees,
24 charges, and special assessments for benefits conferred, for its public and proprietary
25 functions, activities, operations, undertakings, and improvements; to contract debts,
26 borrow money, issue bonds, warrants, and other evidences of indebtedness; to
27 establish charges for any city or other services; and to establish debt and mill levy
28 limitations. Notwithstanding any authority granted under this chapter, all property must
29 be assessed in a uniform manner as prescribed by the state board of equalization and
30 the state supervisor of assessments and all taxable property must be taxed by the city
31 at the same rate unless otherwise provided by law. The authority to levy taxes under

- 1 this subsection does not include authority to impose ~~income taxes~~ any other tax
2 except as specifically authorized under this section.
- 3 3. To fix the fees, number, terms, conditions, duration, and manner of issuing and
4 revoking licenses in the exercise of its governmental police powers.
- 5 4. To provide for city officers, agencies, and employees, their selection, terms, powers,
6 duties, qualifications, and compensation. To provide for change, selection, or creation
7 of its form and structure of government, including its governing body, executive officer,
8 and city officers.
- 9 5. To provide for city courts, their jurisdiction and powers over ordinance violations,
10 duties, administration, and the selection, qualifications, and compensation of their
11 officers; however, the right of appeal from judgment of such courts shall not be in any
12 way affected.
- 13 6. To provide for all matters pertaining to city elections, except as to qualifications of
14 electors.
- 15 7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and
16 regulations to carry out its governmental and proprietary powers and to provide for
17 public health, safety, morals, and welfare, and penalties for a violation thereof.
- 18 8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use,
19 operation, and regulation thereof.
- 20 9. To define offenses against private persons and property and the public health, safety,
21 morals, and welfare, and provide penalties for violations thereof.
- 22 10. To engage in any utility, business, or enterprise permitted by the constitution or not
23 prohibited by statute or to grant and regulate franchises therefor to a private person,
24 firm, corporation, or limited liability company.
- 25 11. To provide for zoning, planning, and subdivision of public or private property within the
26 city limits. To provide for such zoning, planning, and subdivision of public or private
27 property outside the city limits as may be permitted by state law.
- 28 12. To levy and collect franchise and license taxes for revenue purposes.
- 29 13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

- 1 14. To fix the boundary limits of said city and the annexation and deannexation of territory
2 adjacent to said city except that such power shall be subject to, and shall conform with
3 the state law made and provided.
- 4 15. To contract with and receive grants from any other governmental entity or agency, with
5 respect to any local, state, or federal program, project, or works.
- 6 16. To impose ~~registration fees on motor vehicles,~~ farm machinery gross receipts taxes,
7 alcoholic beverage gross receipts taxes, or sales and use taxes ~~in addition to any~~
8 ~~other taxes imposed by law. After December 31, 2005, sales.~~ Sales and use taxes and
9 gross receipts taxes levied under this chapter:
- 10 a. Must conform in all respects with regard to the taxable or exempt status of items
11 under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed
12 at multiple rates with the exception of sales of ~~fuel used to power motor vehicles,~~
13 ~~aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas,~~
14 ~~or other fuels delivered by the seller or the retail sale or transfer of motor~~
15 ~~vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile~~
16 homes.
- 17 b. May not be newly imposed or changed except to be effective on the first day of a
18 calendar quarterly period after a minimum of ninety days' notice to the tax
19 commissioner or, for purchases from printed catalogs, on the first day of a
20 calendar quarter after a minimum of one hundred twenty days' notice to the
21 seller.
- 22 c. May not be limited to apply to less than the full value of the transaction or item as
23 determined for state sales and use tax purposes, except for farm machinery
24 gross receipts tax.
- 25 d. Must be subject to collection by the tax commissioner under an agreement under
26 section 57-01-02.1 and must be administered by the tax commissioner in
27 accordance with the relevant provisions of chapter 57-39.2, including reporting
28 and paying requirements, correction of errors, payment of refunds, and
29 application of penalty and interest.

30 It is the intention of this chapter to grant and confirm to the people of all cities coming within
31 its provisions the full right of self-government in both local and city matters within the powers

1 enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall
2 continue to apply to home rule cities, except insofar as superseded by the charters of such
3 cities or by ordinance passed pursuant to such charters.

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