

Sixty-seventh  
Legislative Assembly  
of North Dakota

## 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,  
4 ~~40-12-02~~, and 40-23-21 of the North Dakota Century Code, relating to the authority of cities and  
5 counties to levy an infrastructure fee in lieu of special assessments and special assessment  
6 fund balances.

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

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

10 **11-09.1-05. Powers.**

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

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

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

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

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

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

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

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

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

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

1 calendar quarter after a minimum of one hundred twenty days' notice to the  
2 seller.

3 c. May not be limited to apply to less than the full value of the transaction or item as  
4 determined for state sales and use tax, except for farm machinery gross receipts  
5 tax purposes.

6 d. Must be subject to collection by the tax commissioner under an agreement under  
7 section 57-01-02.1, with the exception of a county lodging or county restaurant  
8 tax, and must be administered by the tax commissioner in accordance with the  
9 relevant provisions of chapter 57-39.2, including reporting and paying  
10 requirements, correction of errors, payment of refunds, and application of penalty  
11 and interest.

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

25 ~~5-6.~~ Provide for county elected and appointed officers and employees, their selection,  
26 powers, duties, qualifications, and compensation, and the terms of county appointed  
27 officers and employees. However, after adoption of a home rule charter, a county  
28 elected office may not be eliminated or combined with another office except upon  
29 approval of a majority of the electors of the county voting upon the question at a  
30 primary or general election or pursuant to the county officer combination, separation,  
31 or redesignation procedures of chapter 11-10.2. A home rule charter may not diminish

1 the term of office for which a current county officer was elected, redesignate that  
2 elected office during that term as appointed, or reduce the salary of the office for that  
3 term. This subsection does not authorize a county to redesignate the elected offices of  
4 sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.

5 ~~6-7.~~ Provide for all matters pertaining to county elections, except as to qualifications of  
6 electors.

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

13 ~~8-9.~~ Lay out or vacate public grounds, and provide through its governing body for the  
14 construction, use, operation, designation, and regulation of a county road system.

15 ~~9-10.~~ Provide for zoning, planning, and subdivision of public or private property within the  
16 county limits but outside the zoning authority of any city or organized township.

17 ~~10-11.~~ Exercise in the conduct of its affairs all powers usually exercised by a corporation.

18 ~~11-12.~~ Contract with and receive grants from any other governmental entity or agency, with  
19 respect to any local, state, or federal program, project, or works.

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

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

26 **11-11-55.1. Petition or resolution for improvements - Levy of special assessments -**  
27 **Levy of infrastructure fee.**

28 1. The board of county commissioners of any county, by resolution or upon receipt of a  
29 petition of sixty percent of the landowners in a defined area, outside of the limits of any  
30 incorporated city, may install the petitioned improvements as benefit the defined area,

1 provide for the financing of the improvements, and levy special assessments for the  
2 payment of all or part of the improvements within the defined area.

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

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

14 4. As used in this section:

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

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

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

24 **40-05.1-06. Powers.**

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

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

- 1           2. To control its finances and fiscal affairs; to appropriate money for its purposes, and  
2           make payment of its debts and expenses; to contract debts, borrow money, issue  
3           bonds, warrants, and other evidences of indebtedness; to establish charges for any  
4           city or other services; and to establish debt limitations.
- 5           3. To levy and collect property taxes and special assessments for benefits conferred, for  
6           its public and proprietary functions, activities, operations, undertakings, and  
7           improvements, and establish mill levy limitations. Notwithstanding any authority  
8           granted under this chapter, all property must be assessed in a uniform manner as  
9           prescribed by the state board of equalization and the state supervisor of assessments  
10          and all taxable property must be taxed by the city at the same rate unless otherwise  
11          provided by law.
- 12          4. To levy and collect an infrastructure fee. The fee must replace a general special  
13          assessment on all property for payment of infrastructure maintenance costs through a  
14          utility bill issued by a municipality. The money collected under this subsection may not  
15          be used for any purpose other than infrastructure maintenance costs. If a home rule  
16          city levies an infrastructure fee, the home rule city also may levy and collect green field  
17          special assessments. As used in this subsection:
- 18           a. "General special assessments" means special assessments levied for the  
19           purpose of maintaining existing roads and infrastructure and special  
20           assessments levied for the construction or repair of arterial roads and  
21           infrastructure that provide a benefit to the entire community.
- 22           b. "Green field special assessments" means special assessments levied for  
23           infrastructure costs associated with the development of agricultural or  
24           undeveloped property.
- 25          5. To levy and collect excises, fees, charges, franchise and license taxes, sales and use  
26          taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a  
27          city lodging tax, and a city restaurant tax. For purposes of this section, any taxes  
28          imposed under this section on farm machinery, farm irrigation equipment, and farm  
29          machinery repair parts used exclusively for agricultural purposes, or on alcoholic  
30          beverages, which were in effect on December 31, 2005, become gross receipts taxes  
31          after December 31, 2005. After December 31, 2005, any portion of a charter or any

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

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

26 ~~5-6.~~ To fix the fees, number, terms, conditions, duration, and manner of issuing and  
27 revoking licenses in the exercise of its governmental police powers.

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

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- 1     ~~7-8.~~    To provide for city courts, their jurisdiction and powers over ordinance violations,  
2                    duties, administration, and the selection, qualifications, and compensation of their  
3                    officers; however, the right of appeal from judgment of such courts shall not be in any  
4                    way affected.
- 5     ~~8-9.~~    To provide for all matters pertaining to city elections, except as to qualifications of  
6                    electors.
- 7     ~~9-10.~~   To provide for the adoption, amendment, and repeal of ordinances, resolutions, and  
8                    regulations to carry out its governmental and proprietary powers and to provide for  
9                    public health, safety, morals, and welfare, and penalties for a violation thereof.
- 10  ~~40-11.~~   To lay out or vacate streets, alleys, and public grounds, and to provide for the use,  
11                    operation, and regulation thereof.
- 12  ~~41-12.~~   To define offenses against private persons and property and the public health, safety,  
13                    morals, and welfare, and provide penalties for violations thereof.
- 14  ~~42-13.~~   To engage in any utility, business, or enterprise permitted by the constitution or not  
15                    prohibited by statute or to grant and regulate franchises therefor to a private person,  
16                    firm, corporation, or limited liability company.
- 17  ~~43-14.~~   To provide for zoning, planning, and subdivision of public or private property within the  
18                    city limits. To provide for such zoning, planning, and subdivision of public or private  
19                    property outside the city limits as may be permitted by state law.
- 20  ~~44-15.~~   To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- 21  ~~45-16.~~   To fix the boundary limits of said city and the annexation and deannexation of territory  
22                    adjacent to said city except that such power shall be subject to, and shall conform with  
23                    the state law made and provided.
- 24  ~~46-17.~~   To contract with and receive grants from any other governmental entity or agency, with  
25                    respect to any local, state, or federal program, project, or works.

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



1 ~~SECTION 4. AMENDMENT. Section 40-12-02 of the North Dakota Century Code is~~  
2 ~~amended and reenacted as follows:~~

3 ~~40-12-02. Submission of proposed ordinance by petition -- Filed with city auditor --~~  
4 ~~Request in petition.~~

5 ~~1. Any proposed ordinance may be submitted to the governing body of the municipality~~  
6 ~~by a petition signed by qualified electors thereof equal in number to fifteen percent of~~  
7 ~~the votes cast for all candidates for the executive officer at the preceding regular~~  
8 ~~municipal election. The petition must be filed in the city auditor's office and must~~  
9 ~~contain a request that the ordinance set out in the petition be submitted to a vote of~~  
10 ~~the qualified electors of the city if it is not passed by the governing body of the~~  
11 ~~municipality.~~

12 ~~2. Notwithstanding subsection 1, a proposed ordinance for the purpose of levying an~~  
13 ~~infrastructure fee under section 6 of this Act may be submitted to the governing body~~  
14 ~~of the municipality by a petition signed by sixty percent of the qualified electors who~~  
15 ~~voted in the preceding municipal election. The petition must be filed in the city~~  
16 ~~auditor's office and submitted to a vote of the qualified electors of the city at the next~~  
17 ~~municipal election.~~

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

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

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

27 2. As used in this section:

28 a. "General special assessments" means special assessments levied for the  
29 purpose of maintaining existing roads and infrastructure and special  
30 assessments levied for the construction or repair of arterial roads and  
31 infrastructure that provide a benefit to the entire community.

1           b. "Green field special assessments" means special assessments levied for  
2           infrastructure costs associated with the development of agricultural or  
3           undeveloped property.

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

6           **40-23-21. Use of collections of subsequent assessments.**

- 7           1. All collections of special assessments levied pursuant to sections 40-23-17 through  
8           40-23-21 shall be credited as received to the special fund maintained by the  
9           municipality for the payment of any outstanding special improvement warrants,  
10          refunding improvement bonds, general obligation bonds, or revenue bonds which were  
11          issued to finance the improvement for which the assessments were levied, or, if no  
12          such obligations are outstanding, to such fund as the governing body may direct.
- 13          2. If a governing body of a municipality levied and collected an infrastructure fee under  
14          section 54 of this Act, the funds generated by the fee must be used for the payment of  
15          any outstanding special improvement warrants, refunding improvement bonds, general  
16          obligation bonds, or revenue bonds issued to finance the improvement. The governing  
17          body of a municipality may not use funds generated by an infrastructure fee imposed  
18          after the effective date of this Act for the payment of any outstanding special  
19          improvement warrants, refunding improvement bonds, general obligation bonds, or  
20          revenue bonds, issued before the effective date of this Act for the purpose of financing  
21          green field special assessments, as defined in section 40-05.1-06.