

February 18, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1184

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-15, and two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the general use of quick take eminent domain; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is created and enacted as follows:

Quick take eminent domain - Use - Restrictions.

1. Unless otherwise specified by law, when the state, a department or agency of the state, or a political subdivision seeks to acquire a right of way under section 16 of article I of the Constitution of North Dakota by making an offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county where the right of way is located, the state, department, agency, or political subdivision first shall attempt to purchase the right of way by conducting informal negotiations for not less than sixty days.
2. If informal negotiations fail, the state, department, agency, or political subdivision shall engage in formal negotiations by:
 - a. Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - b. Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - c. Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
3. Any written communication to the landowner must include contact information for responding to the communication and a description of the required negotiation timeline.

4. The state, department, agency, or political subdivision may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. The state, department, agency, or political subdivision may take immediate possession of the right of way, but not a blanket easement, if the state, department, agency, or political subdivision:
 - a. Files an affidavit by a lawfully authorized representative which states the district has fulfilled the required negotiation steps; and
 - b. Deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
5. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the entity that acquired the land, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
6. If ownership of a right of way has not terminated, ownership of a right of way acquired under this section terminates automatically when the state, department, agency, or political subdivision does not use the right of way for the purpose for which the right of way was acquired.

SECTION 2. Two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code are created and enacted as follows:

If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person for failing to substantially comply with this subdivision, the person may not use quick take eminent domain for any purpose for a period of two years from the date of the determination or judgment.

A person failing to comply substantially with this section is liable to the owner of the property taken for treble damages incurred by the owner of the property."

Renumber accordingly