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House Bill 1384 Testimony in Opposition

House Energy and Natural Resources Committee, Representative Porter, Chair

February 9, 2023

Chairman Porter, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose HB 1384.

Property ownership is a right that should not be challenged unless necessary, and a property owner should not be stripped of any rights in pursuit of just compensation. It is appropriate that the law preserves the right to a jury trial 32-15-13, access to “any general, special, or adjourned term of district court” 32-15-17, and assessment of damages 32-15-22.

Similarly, it is appropriate that the law proscribes the responsibilities of the condemnor, one of which is the duty to “make every reasonable and diligent effort to acquire property by negotiation” 32-15-06.1(1), including offering the full amount established by an appraisal to be just compensation.

This bill is problematic, because it would incentivize the property owner to disregard any such offer, even an offer known to be fair, because of a guaranteed inflated payout through litigation. Litigation is costly and causes delay. Here, a property owner would benefit from refusing any pre-litigation offer knowing that when the court determines just compensation, the property owner will receive a judgment for that amount plus the increased 33%, and likely, also court costs and attorney fees.

In the case of a utility, those increased costs will be borne by customers.

Utility companies work diligently with regulatory agencies and affected parties when siting facilities. Collectively, they make every effort to accommodate the concerns of property owners and fairly compensate them for the use of their land. Use of eminent domain proceedings is extremely rare with ND’s investor-owned utilities, but the ND Constitution reserves the right to use eminent domain because utility services are critical services. This bill would drive up costs for those critical services.

This committee knows how critical electric transmission infrastructure is to reliable, affordable electricity. The legislature should be considering and passing laws to incent the development of critical infrastructure rather than advancing ideas that make infrastructure development difficult and expensive. We urge the committee to reject this bill.