

Testimony Prepared for the  
**Senate Energy and Natural Resources Committee**

January 26, 2023

By: Jason Benson, Cass County Engineer



**RE: Oppose SB 2313 - relating to eminent domain and the assessment of damages**

Chairman Patton and Senate Energy and Natural Resources Committee members, thank you for the opportunity to provide testimony on SB 2313. I am Jason Benson, the Cass County Engineer, and I also serve on the legislative committee for the ND Association of County Engineers. I am here to oppose the bill as proposed. This bill will disincentivize landowners from conducting fair negotiations with Counties for the acquisition of land for road and bridge projects. This bill will result in higher costs to Counties and a significant increase in court cases for eminent domain.

County Highway Departments across North Dakota routinely acquire strips of land adjacent to roads and bridges. It is not uncommon for a six-mile reconstruction project to require an additional 15 or 20 feet of right of way or easement to improve the road to today's highway standards. A project like this may require working with 30 to 50 landowners along the corridor.

Our goal in right of way acquisition is to be fair and reasonable in our process so that both the landowner and the County taxpayer dollars are treated fairly. A 20-foot strip of land along a half mile of road is 1.2 acres. In the last year we have seen appraised values of land come in around \$8000-\$10,000 per acre. Our process now includes sitting down with the landowner, showing them the appraisal, and conducting fair negotiations to come to a reasonable value.

This bill will directly provide a 33% value increase to their property if the landowner forces the County to eminent domain. In the example above, 1.2 acres at \$10,000 would have a price of \$12,000. If this bill is passed the landowner would be incentivized to be taken to court under eminent domain. The result will be they will get an extra \$4000 for the 1.2 acres, for a total of \$16,000. For the price of a tank of gas to drive to the court hearing, the landowner will collect an extra \$4000.

Of course, this \$4000 does not include the administrative and legal costs to the County to bring this eminent domain case to trial. When totaling the land cost of the \$16,000 plus legal fees, the total cost for this 1.2 acres could exceed \$25,000. As I described above, 20 feet of additional right of way on both sides of the road along a six-mile corridor is roughly 29 acres. We would currently anticipate paying \$290,000 for this additional right of way. If this law passes, we expect to pay more than \$725,000 in land cost and legal fees for the same 29 acres. This financial toll on Counties would result in fewer road and bridge projects being completed in North Dakota.

Additionally, the time necessary to take 30 to 50 landowners to court for eminent domain will add years to a project. North Dakota has seen the regional construction cost index rise at a rate of 9% per year and at an even higher rate in recent years. A one- or two-year delay on a \$4 million project could significantly add to the project cost. In many Counties these types of significant road improvement projects would just not be attempted, and road infrastructure would deteriorate.

Chairman Patton and committee members, I want to reiterate that NDACE opposes the bill as written. Approving this bill will result in significant costs and time delays in the right of way and easement acquisition process for County road and bridge improvement projects. This bill will result in not only higher land cost, but significant costs on legal and court fees. This bill would also place a burden on the North Dakota courts with the eminent domain cases that would result. I urge a do not pass.