



February 12, 2025

Senate Judiciary Committee

SB 2321

Senator Diane Larson, Chair

For the record, I am Stephanie Dassinger Engebretson, appearing on behalf of the North Dakota League of Cities (NDLC). I am the deputy director and attorney for the NDLC. The NDLC appears in opposition to SB 2321.

Cities do not use eminent domain proceedings often and strive to work with landowners to find solutions that work for everyone. However, most recently, a few cities have needed to use eminent domain to acquire property for flood protection projects. HB 2321 would make those projects more expensive and less likely for cities and landowners to work out an agreement without litigation.

In Section 2 of the bill, on page 1, line 18, the language “in its discretion” is struck. This language provides the court with discretion for awarding costs and attorney fees when an eminent domain case is litigated. It is the NDLC’s understanding that in most cases, the court awards the defendant his or her attorney fees and costs. However, in some cases, if a defendant ends up receiving less than or equal to the amount offered in settlement negotiations, the court could decide not to award attorney fees and costs. Removing this language from the code removes any incentive a defendant has to work with a city to settle a case without a trial. The NDLC believes striking this language would significantly increase the number of eminent domain cases that go to trial, even when just and fair compensation has been offered.

In sections 1, 2, and 3 of the bill language stating, “the costs incurred for retaining an expert witness for use during the condemnation proceeding” is added to the costs that must be awarded in an eminent domain proceeding. This language does not allow for any judicial discretion related to reasonableness of those costs and would be an unregulated cost added to these proceedings. Additionally, expert witness fees are usually handled in any settlement agreements that are negotiated between the parties. As such, adding expert witness fees to the language in the code would just increase the cost of eminent domain proceedings.

The NDLC respectfully requests a Do Not Pass recommendation on SB 2321.