

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HCR 3031

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 3031

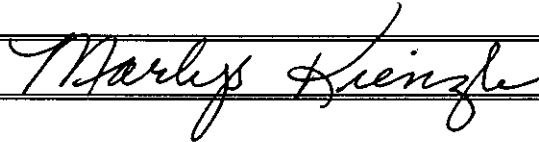
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: #9350

Committee Clerk Signature



Minutes:

**Chairman Grande:** Open the hearing for HCR 3031.

**Rep J. Kelsh:** I am the Representative from District 26 which is in the southwestern part of the state. This resolution deals with the study of pipe lines in the state and the use of Eminent

Domain in ND.

This was put in due to the constituent Carl Mathews and I would like for him to testify.

**Rep Froseth:** In lines 3 and 4: Where it states that lines can be build across the state without any direct benefit to the people of this state, I know for a fact they pay a lot of taxes. Isn't that a misconstrued statement?

**Rep J. Kelsh:** That is true they pick up taxes but do not leave off gas and oil in the state of North Dakota.

**Paul Matthews:** My event is over but as I spoke with Rep Kelsh I am here to inform the public as to what it is like to be the subject of eminent domain and hope no one else has to go through this.

The process doesn't work and is not in the landowner's best interest. It is an uneven field. As soon as the Eminent Domain is made or not even close to being made available it is uneven.

They had their application filed so everyone knows that it was going to happen. So how do you negotiate with someone who already has Eminent Domain? They send their agents out who do not have authority to negotiate. Process does not seem fair. I did have more than 2000 feet of property and asked if they would want to move it further away. They said no! There needs to be safeguards.

**Rep Nathe:** Where is the pipeline in relation to your property?

**Paul Matthew:** About 1500 feet away.

**Rep Kasper:** How long from the start of the negotiation to the end of the negotiation?

**Paul Matthew:** I would say that right now is about the time there was a project. That agent did notify me that a proposal may go through. The next opportunity of the next contact was the public hearings. At that time I didn't know where the pipeline was going to be located, but in the hearings in July I learned it would be 156 feet away, about a year and ½.

**Rep Kasper:** If we have a 500 bumper to run the pipeline from your home how could they possibly think they would run it 156 ft or under your home? Would they give you a reason for that?

**Paul Matthew:** They didn't know my home was there.

**Ron Ness:** North Dakota Petroleum Council:

Standing in opposition of this bill, I do not understand some of the points made here. North Dakota does not allow quick take Eminent Domain. In talking to our oil and gas attorneys who have been sighting pipelines for 29 years and the PSC, essentially you can't quick take Eminent domain in North Dakota. You can go to court with the landowner, and damages and attorney's fees are provided for you in our century code.

If it is a federally regulated pipeline, which generally is Natural Gas the state does allow federal Domain, but oil and gas pipelines are regulate by the PSC in North Dakota.

**Rep Karls:** Did we establish if this is going to be an oil or gas pipeline?

**Ron Ness:** Oil Pipeline.

**Rep Wolf:** Why should be having a study if there are no problems? If there are no problems than study should \_\_\_\_\_ correct?

**Ron Ness:** We do not have knowledge of any problems and neither does the PSC. So if there is a study that would be okay, but we felt we needed to clarify.

**Chairman Grande:** Mr. Matthews what type of pipeline went through you land? What company were you dealing with?

**Paul Matthew:** It is empty right now but it was crude oil. Trans-Canada  
Could I discuss quick-take? With the pressure that they give you it doesn't make any difference if quick-take is available or not.

**Todd Kranda:** I am an Attorney from Kelsch Law Firm.

We represent Keystone-Trans-Canada Petroleum Pipeline Company.

Some of the statements are not accurate. Most of the Pipeline is complete in North Dakota.

There is some clean up and reclamation activities but for most part the pipe is in the ground.

This is piping crude oil from Canada to refineries in Oklahoma.

This pipeline is regulated by FERC and so the PSC never did site them.

In terms of the actual study, I have some questions on line 7 and 8. I don't think that is completely accurate. Consideration is provided. A jury considers fair compensation.

Next line 9 and 10: If the property owner might be the last one on the line, allows the company to proceed with legal proceedings to access that property and cannot go through quick take.

**Rep J Kelsh:** The Bill drawn up by the Legislative Council and so I hope that they are accurate.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One HCR 3031

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 2/12/2009

Recorder Job Number: 9400

Committee Clerk Signature

*Melissa M. Inhardt*

Minutes:

### COMMITTEE WORK ONE:

**Chairman Grande:** We will have discussion on HCR 3031 on eminent domain.

I have talked with the PSC about this and not that they had big concerns about this but they were wondering why because of the way the rules and laws are if this is not going to change or say anything different. They thought it was an odd thing. I wish Lana would have said something but she didn't.

**Rep. Froseth:** Didn't we have a study on eminent domain or something on a ballot not too long ago?

**Chairman Grande:** We had an initiated measure on something. What did that do?

**Rep. Froseth:** Did that call for a study or what was it?

**Rep. Dahl:** You cannot condemn it for a business or something.

**Chairman Grande:** You can't take it over for economic development.

**Rep. Froseth:** I can certainly sympathize with the people that are affected like this fellow was. He had a legitimate complaint but how do they expect any progress to be made with electrical transmission and pipeline and moving of natural resources if we don't have the authority to use eminent domain in some cases to get the jobs done. Like Keystone Pipeline (can't hear the speaker). There will be instances like that on those types of projects but most projects need to run through those counties if they pass through.

**Chairman Grande:** Mr. Kranda did address that a little bit too that they did have various complaints and going into the condemnation hearings and going to the judicial jury and most of the settled and didn't have a problem by the time they were getting through to that too. I think that there was just a lack of communication that seemed to be the biggest issue.

**Rep. Wolf:** I agree with what Rep. Froseth is saying, the concern I have is that they told him they were going to only move it 160 some feet and they wanted him to sign that. What if he did not know that there was a 500 foot requirement? That really bothered me. But whether this study will affect that, I don't know.

**Chairman Grande:** I don't know that it would have, but I have a feeling that when they got there and started that they would have found out it was illegal for them to do it and they would have had to move. I think that it sounded like the guy who was approaching his door was just plain rude and the guy who was

dealing with this should have just been fired. We did have a question on some of the wording in here but what are the committee's wishes?

**Rep. Kasper:** Motion for a Do Not Pass.

**Rep. Froseth:** 2<sup>nd</sup>.

**Rep. Amerman:** We are all sitting here and Rep. Froseth makes some good points, and Chairman Grande makes some good points and then she said I got feelings that do it this way and we are all sitting here and we are doing exactly why we should study it. Nobody knows, I went to two PSC meetings, and it was not only this gentlemen, there were other gentlemen up and down the line when the pipeline came through. I am not saying we do not need eminent domain for the good of the whole public but there could be a better way to do it and it might be a process and if we can get some people that have been through this with less than satisfactory treatment so to speak, plus the PSC and some of these lawyers or whatever, I don't see where we shouldn't study this. As we are sitting here today I can tell from the conversation, we know what eminent domain does, but we really don't know how the whole process works and I don't think it is such a bad idea to study it.

**Rep. Kasper:** This is not a demand to study it, this is just a may, how it's worded? Does the Legislative Council study eminent domain? Does that mean they have to?

**Chairman Grande:** I don't know how that wording works. It says "direct them to study it."

**Rep. Froseth:** I don't know what the PSC uses now for the guidelines and permits but they must have a program in place that permits them to do it. I don't know how we could improve it or change it, is it possible?

**Rep. Winrich:** My understanding is that because this is a resolution, it is advisory. When you say in a bill that the Legislative Council shall study something than it is mandatory because that becomes State Law. But when you say in a resolution that they shall study it, it is advisory and when the Legislative

Council meets after the session they will pick the studies that they want to do. So they can reject it.

**Rep. Kasper:** Then Chairman Grande, I withdraw my motion.

**Chairman Grande:** Motion is withdrawn, we have the bill in front of us.

**Rep. Wolf:** Motion for a Do Pass.

**Rep. Karls:** 2<sup>nd</sup>.

**Chairman Grande:** We have a Do Pass Motion on HCR 3031. Any further discussion?

**Clerk Erhardt:** Roll Call. Yes: 8. No: 4. Absent: 1. Carrier: Rep. Amerman.



Date: 2/12/14  
Roll Call Vote #: 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3031

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Wolf Seconded By Harbo

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande		✓	Rep. Amerman	✓	
Vice Chairman Boehning		✓	Rep. Conklin	✓	
Rep. Dahl		✓	Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier					
Rep. Nathe		✓			

Total (Yes) 8 No 4

Absent ~~1~~ 1

Floor Assignment Rep. Amerman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 13, 2009 2:04 p.m.

**Module No: HR-29-2694**  
**Carrier: Amerman**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3031: Government and Veterans Affairs Committee (Rep. Grande, Chairman)**  
recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).  
HCR 3031 was placed on the Eleventh order on the calendar.

2009 SENATE NATURAL RESOURCES

HCR 3031

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3031

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11265

Committee Clerk Signature

*Kat L.*

Minutes:

**Senator Lyson** opens the hearing on HCR 3031, directing the Legislative Council to study eminent domain laws as they relate to pipeline siting.

**Representative Amerman**, introduces the resolution. I think we all agree that eminent domain laws that we have in the books today are important and although they probably are not used except as a last resort they are important to have. I think there is a way we can improve them through a study.

**Paul Mathews** I was served with eminent domain papers this past year relating to a pipeline going through North Dakota. He tells the committee about his story. As a property owner you think you would be given the chance to negotiate but you are not.

**Lynn Wolff**, Dakota Resource Council, we worked with the Keystone Pipeline. I don't think it is right for a company to come in and tell the landowners they have to do this or else before the PSC has said that they have the right to cross the border into North Dakota.

**Representative Kelsh** I had some landowners who had pressure put on them to sign a lease under the threat of eminent domain. Both of them had the processes started before they entered into the negotiation. The purpose of the bill is not to harm or slow down pipeline

development. It is to be sure property owners are treated well and given proper enumeration for what has happened to their property.

**Todd Kranda**, Attorney for TransCanada & Alliance Pipelines, I have a handout of the code and provisions (see attachment #1). I also have a map of both pipelines (see attachments #2 & #3). I don't think the study is necessary. No one wants to be part of a lawsuit. I don't think there is anything unique about studying eminent domain just because they are uncomfortable with the process. I think the process is well defined in chapter 32-15. We have land agents out dealing with land owners a year in advance. We do that at our own risk. We have to go to the PSC to get it approved. We had meetings explaining the process to the land owners. The PSC has adequate safe guards with its avoidance and exclusion areas, including the 500 feet from an occupied structure provision. Eminent domain is used as a last resort and it doesn't regulate where the pipeline can put the line on the land. The company I work for gets a land easement so we go under the ground. We certainly disturb the ground for a year maybe two years and there might be some crop damage, but we compensate for that. We pay for crop damages, the temporary construction zone, and the permanent easement. I believe the company is being more than fair. Lines 3 and 4 are inaccurate. There is benefit. There is a financial benefit to the counties in terms of taxes paid. There are additional benefits such as the economic development that comes in when a pipeline goes through. I also believe the availability of that resource.

**Senator Hogue** Could you describe what financial assurances have to be put into place for the pipeline company placing it?

**Todd Kranda** the company is responsible for any damages that it could create on the property. There isn't a bond that the PSC requires that I recall. I know we have to pay a filing fee for the process of investigating and the cost of the PSC to review and site and if necessary

hire experts. In terms of damages, that refers simply if an incident occurs in some manner other than paying crop damages.

**Ron Ness**, North Dakota Petroleum Council, the North Dakota law is very clear. You can't do quick take under the North Dakota law. If this was a natural gas pipeline the federal law allows quick take in North Dakota. The eminent domain laws are very clear. The surface owners do get their attorney's fees paid. I don't know that this will really do anything.

**Senator Lyson** closed the hearing on HCR 3031.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB3031

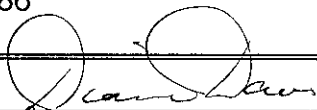
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11686

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee Work

**Senator Lyson** – Says this one is over the loss of land through eminent domain.

**Senator Schneider** – Thinks a study would be good for this, so he will vote for it.

**Senator Lyson** – Asks how many court cases he thinks there are on this.

**Senator Schneider** – Replies possibly billions.

Committee discusses putting the word shall in there for a study.

**Senator Triplett** – Says she tries to analyze these and believes there is no supporting phrases that make sense to her as a reason for studying it. So she recommends a do not pass.

**Senator Triplett** – Motions for a do not pass.

**Senator Erbele - Seconds**

Discussion

**Senator Hogue** – Said apparently we do not require the owners of the pipeline and the operators to have any financial assurance in place should there be an event if the pipeline fails. He thinks this is a significant omission from the regulations.

**Senator Lyson** – Says he recalls the company has to have a worth of so much otherwise there is bond.

Committee has a verbal vote, 6 yes, 1 no.

Senator Freborg will carry.



Date: 4/2/09

Roll Call Vote #: 1

### 2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee Bill #: 3031

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Amendment

Motion Made By Sen. Triplett Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Sen. Freborg

If the vote is on an amendment, briefly indicate intent:

*carried - voice vote*

**REPORT OF STANDING COMMITTEE (410)**  
April 6, 2009 9:41 a.m.

**Module No: SR-58-6205**  
**Carrier: Freborg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3031: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3031 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HCR 3031

## ARTICLE I

## DECLARATION OF RIGHTS

**Section 1.** All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

**Section 2.** All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

**Section 3.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Section 4.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

**Section 5.** The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

**Section 6.** Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

**Section 7.** Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

**Section 8.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

**Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

**Section 10.** Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

**Section 11.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall

not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

**Section 12.** In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

**Section 13.** The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

**Section 14.** The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

**Section 15.** No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

**Section 16.** Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

**Section 17.** Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

**Section 18.** No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

**Section 19.** The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

**Section 20.** To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

**CHAPTER 32-15  
EMINENT DOMAIN**

**32-15-01. Eminent domain defined - How exercised - Condemnor defined - Exceptions.**

1. Eminent domain is the right to take private property for public use.
2. Private property may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. When private property is taken by a person, no benefit to accrue from the proposed improvement may be allowed in ascertaining the compensation to be made therefor. Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.
3. Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.
4. For the purpose of this chapter, "condemnor" means a person empowered to take property under the power of eminent domain.

**32-15-02. Purposes for which exercised.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, park district, or school district; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city, or for draining any county or city; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, or park district, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, and irrigating, draining, and reclaiming lands.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams.
6. Byroads leading from highways to residences and farms.
7. Telegraph and telephone lines.

8. Sewage disposal of any city, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university.
9. Cemeteries and public parks.
10. Oil, gas, coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.
11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

**32-15-03. What estate subject to be taken.** The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, for an outlet for a flow or a place for the deposit of debris or tailings of a mine, or for the construction of parking lots and facilities for motor vehicles.
2. An easement, when taken for highway purposes or for any other use except, upon a proper allegation of the need therefor, the court shall have the power to order that a fee simple be taken for such other use.
3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for a public use.

However, the provisions of this section shall not authorize the state or any political subdivision thereof to obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying any estate or right in lands subject to be taken for a public use.

**32-15-03.1. Declaration of legislative intent.** Repealed by omission from this code.

**32-15-03.2. Termination of estates greater than an easement.** No transfer to the state of North Dakota or any of its political subdivisions of property for highway purposes shall be deemed to include any interest greater than an easement, and where any greater estate shall have been so transferred, the same is hereby reconveyed to the owner from which such land was originally taken, or to the heirs, executors, administrators, or assigns of such owner. Such reconveyance shall be subject to any existing contracts or agreements covering such property, and all rights and benefits thereof shall accrue to the grantee.

**32-15-04. What property may be taken.** The private property which may be taken under this chapter includes:

1. All real property belonging to any person.
2. Lands belonging to this state or to any county, city, or park district, not appropriated to some public use.

3. Property appropriated to public use, but such property shall not be taken unless for a more necessary public use than that to which it has been appropriated already, and use by a public corporation shall be deemed a more necessary public use than use for the same purpose by a private corporation or limited liability company, and whenever a right of way shall have been taken and the person, firm, corporation, or limited liability company taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, corporation, or limited liability company to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system.
6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

**32-15-05. What must appear before property taken.** Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.
2. That the taking is necessary to such use.
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

**32-15-06. Entry for making surveys.** In all cases when land is required for public use, the person or corporation, or the person's or corporation's agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever is in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

**32-15-06.1. Duty to negotiate - Just compensation - Appraisals.**

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.
2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.



3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.
4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

**32-15-06.2. Disclosures.** The condemnor, upon request, shall provide the property owner or the owner's representative with the names of at least ten neighboring property owners to whom offers are being made, or a list of all offerees if fewer than ten owners are affected. A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner. Upon request by an owner or the owner's representative, the condemnor shall provide the names of any other property owners within that county and adjacent counties whose property may be taken for the project. The owner or the owner's representative shall have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

**32-15-07. Proceedings by civil action.** Repealed by omission from this code.

**32-15-08. Form of summons - When served.** Repealed by omission from this code.

**32-15-09. Service by publication.** Repealed by omission from this code.

**32-15-10. Copy of summons served through mails.** Repealed by omission from this code.

**32-15-11. Service complete, when.** Repealed by omission from this code.

**32-15-12. When note of issue filed.** Repealed by omission from this code.

**32-15-13. Jury may be demanded.** Whenever in an action brought under the provisions of this chapter an issue is formed whereby it appears that the attendance of a jury will be necessary to assess the damages in such action, the plaintiff therein may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned to assess the damages in such action. Thereupon the judge shall issue an order to the clerk of said court requiring a jury to be summoned, and in such order shall specify the number of jurors to be drawn, the place where they are to appear, and the time when they shall come, which shall be not less than eight days nor more than thirty days from the date thereof.

**32-15-14. When sheriff's fees to be advanced by plaintiff - Surety for jury fees.** Repealed by S.L. 1981, ch. 354, § 1.

**32-15-15. Note of issue, filing.** Repealed by omission from this code.

**32-15-16. Special term of court to hear issue.** The court shall sit at a special term to hear the case according to law and the practice of the court, and shall have the same power to complete the jury as is now provided by law, and the pay of such jurymen, and the penalty for failure or refusal to appear, shall be the same as in other cases.

**32-15-17. Issues tried at any term of court.** The trial of any action under this chapter may be had at any general, special, or adjourned term of district court, held or called in the county in which such action may be pending, and such action may be tried at any such term. If

issue is not joined prior to the commencement of any regular, special, or adjourned term, the plaintiff nevertheless may require said cause to be tried on such day thereof as the court may order, but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

**32-15-18. What complaint must contain.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of the plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract.

**32-15-19. Joinder, consolidation, and separation of proceedings.** All parcels of land lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

**32-15-20. Who may defend.** All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to such person's own property or interest, or that claimed by such person, in like manner as if named in the complaint.

**32-15-21. Power of court.** The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.
3. To determine the respective rights of different parties seeking condemnation of the same property.

**32-15-22. Assessment of damages.** The jury, or court, or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein. If it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.

3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subsections 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the benefit shall be less than the damages so assessed the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.
5. As far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.

**32-15-22.1. Eminent domain - Compensation for moving personal property.**  
Repealed by S.L. 1973, ch. 407, § 17.

**32-15-23. When right to damages accrues.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the taking and its actual value at that date shall be the measure of compensation for all property actually to be taken, and the basis of damages to the property not actually taken, but injuriously affected, in all cases when such damages are allowed as provided in section 32-15-22. The time of the taking shall be determined by the court.

**32-15-24. When title defective.** If the title acquired is found to be defective from any cause, the plaintiff again may institute proceedings to acquire the same as in this chapter prescribed.

**32-15-25. When judgment paid.** The plaintiff, within thirty days after the entry of final judgment, must pay the sum of money assessed, except where school or public land upon which no contract is outstanding is taken for public use under this chapter, the plaintiff shall pay for such land as follows: one-fifth of the sale price in cash at the time of the sale; one-fifth of the purchase price each five years thereafter on the anniversary date of the sale, with interest at the rate of not less than three percent per annum, payable annually in advance.

**32-15-26. Payment or deposit - Proceedings annulled.** Payment may be made to the defendant entitled thereto, or the money may be deposited in court for the defendant and be distributed to those entitled thereto. If the money is not so paid or deposited, the defendant may have execution as in civil actions, unless execution is stayed by order of the court pending a motion for a new trial, or on appeal, and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings.

**32-15-27. Final order - Filing.** When payments have been made as required in sections 32-15-25 and 32-15-26, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

**32-15-28. Public corporation bound by judgment.** In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation shall be bound by the judgment rendered therein and within six months after the entry of such a judgment shall pay into court the full amount of the judgment on account of damages. If the public corporation shall dismiss the action prior to the entry of judgment thereon, the court shall award to the defendant reasonable actual or statutory costs or both, which shall include reasonable attorneys' fees.

**32-15-29. When possession taken - How money paid defendant - Acceptance - Abandonment of defenses.** At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in which the proceeding was tried, upon notice of not less than three days, may authorize the plaintiff to take possession of and use the property during the pendency of and until the final conclusion of the litigation and, if necessary, may stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for the defendant upon judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. The court, or a judge thereof, upon application made by such defendant, shall order and direct that the money so paid into court for the defendant be delivered to the defendant upon the defendant's filing a satisfaction of the judgment, or upon the defendant's filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that the defendant may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by the defendant, except the defendant's claim for greater compensation.

**32-15-30. Payment of money into court at risk of plaintiff.** The payment of the money into court as provided for in this chapter shall not discharge the plaintiff from liability to keep the said fund full and without diminution, but such money shall be and remain as to all accidents, defalcations, or other contingencies as between the parties to the proceedings at the risk of the plaintiff, and shall remain so until the amount of the compensation or damages finally is settled by judicial determination and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until the defendant is authorized or required by order of court to take it. If for any reason the money at any time shall be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation finally is brought to an end, and until paid over or made payable to the defendant by order of the court, as provided in section 32-15-29, and until such time or times the clerk of court shall be deemed to be the custodian of the money and shall be liable to the plaintiff upon the clerk's official bond for the same, or any part thereof, if for any reason it is lost, or otherwise abstracted or withdrawn.

**32-15-31. Deposit of money with state treasurer.** The court may order the moneys to be deposited in the state treasury and in such case the state treasurer shall receive all such moneys, duly receipt for and safely keep the same in a special fund to be entered on the state treasurer's books as a condemnation fund for such purpose, and for such duty the state treasurer shall be liable to the plaintiff upon the state treasurer's official bond. The state treasurer shall pay out such money so deposited in such manner and at such times as the court or judge thereof by order may direct.

**32-15-32. Costs.** The court may in its discretion award to the defendant reasonable actual or statutory costs or both, which may include interest from the time of taking except interest on the amount of a deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal, and reasonable attorney's fees for all judicial proceedings. If the defendant appeals and does not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new trial has been granted upon the application of the defendant and the defendant has failed upon such trial to obtain greater compensation than was allowed the defendant upon the first trial, the costs of such new trial shall be taxed against the defendant.

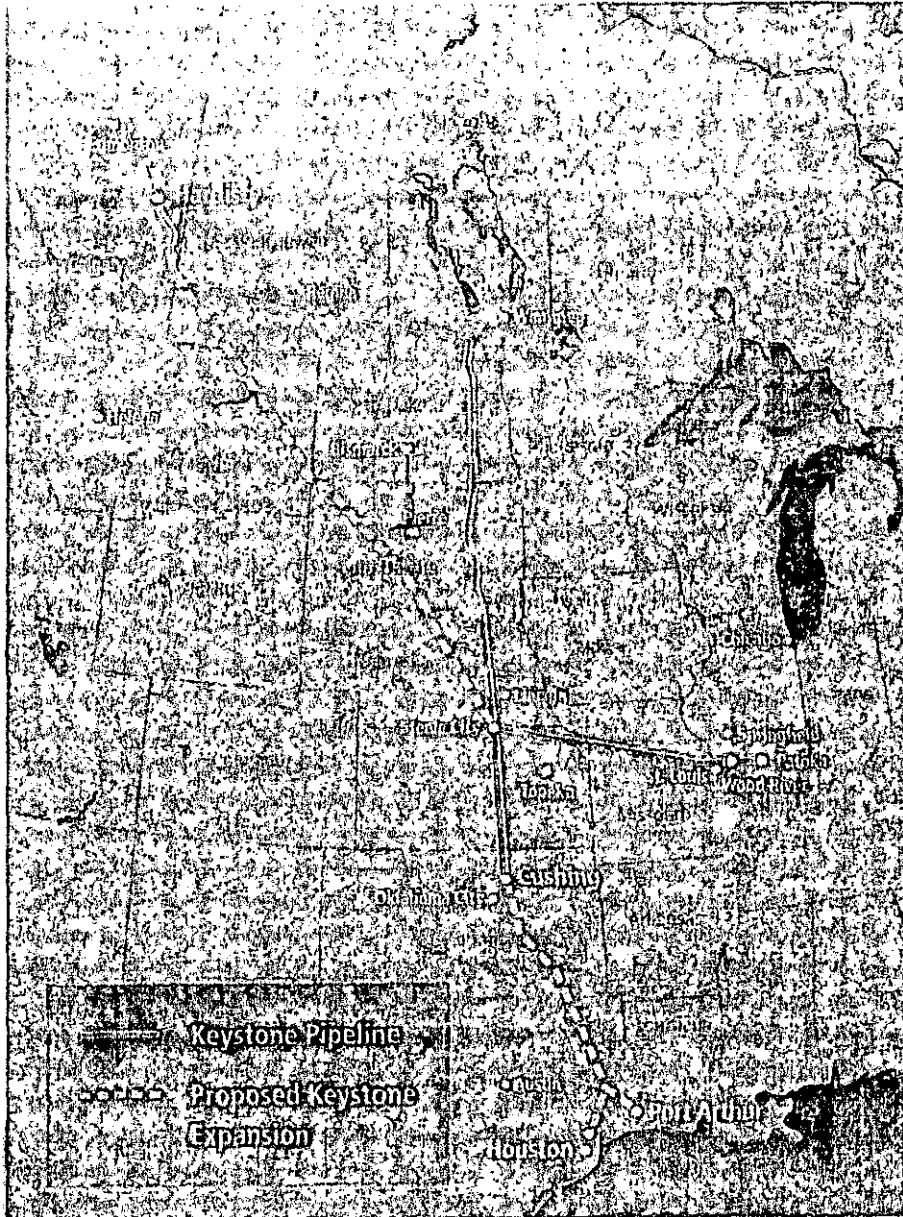
**32-15-33. Rules of practice.** Except as otherwise provided in this chapter, the provisions of the North Dakota Rules of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

**32-15-34. New trials and appeals.** The provisions of this code relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter, but upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve, and hold possession of the property sought to be condemned as provided in section 32-15-29 and to devote the same to the public use in question, and no motion for a new trial or appeal after such payment shall retard the

contemplated improvement in any manner. Any money which shall have been deposited, as provided in section 32-15-29, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

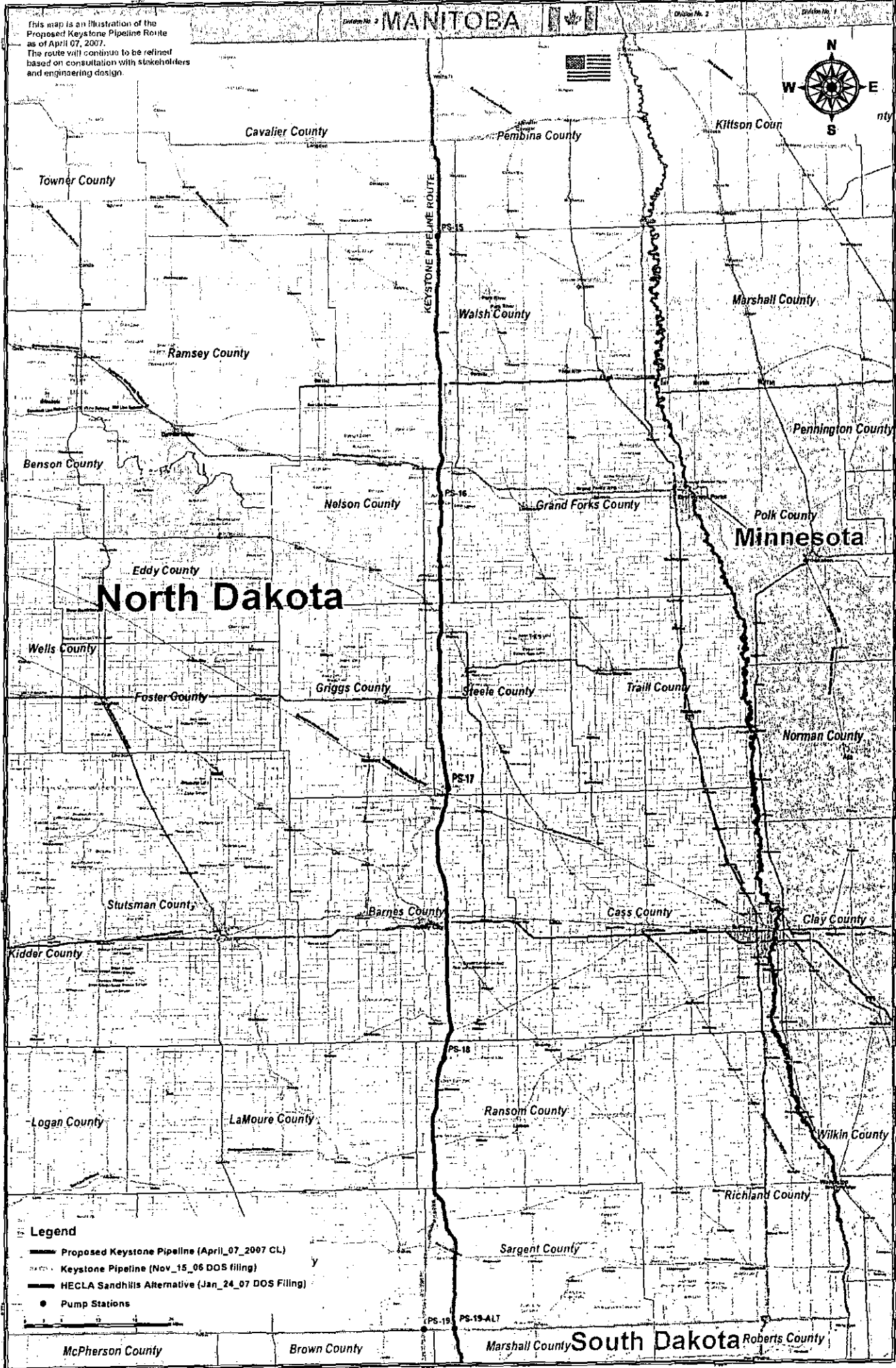
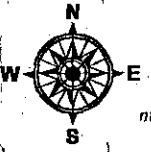
**32-15-35. Eminent domain proceedings - Costs of defendant to be paid when proceedings withdrawn or dismissed by party bringing the proceedings.** Whenever the state acting by and through its officers, departments, or agencies, or any municipality or political subdivision of this state acting by and through its officers, departments, or agencies, or any public utility, corporation, limited liability company, association, or other entity which has been granted the power of eminent domain by the state, shall commence eminent domain proceedings against any land within this state and thereafter withdraws or has such proceedings dismissed without agreement of the defendant, the state, municipality, political subdivision, public utility, corporation, limited liability company, association, or entity commencing such eminent domain proceedings shall be liable for and pay to the owner of such land all court costs, expenses, and fees including reasonable attorney fees as shall be determined by the court in which the proceedings were filed.

Trans Canada  
Keystone  
& KXL



This map is an illustration of the Proposed Keystone Pipeline Route as of April 07, 2007. The route will continue to be refined based on consultation with stakeholders and engineering design.

# MANITOBA



### Legend

- Proposed Keystone Pipeline (April\_07\_2007 CL)
- Keystone Pipeline (Nov\_15\_06 DOS filing)
- HECLA Sandhills Alternative (Jan\_24\_07 DOS Filing)
- Pump Stations

McPherson County

Brown County

Marshall County

South Dakota

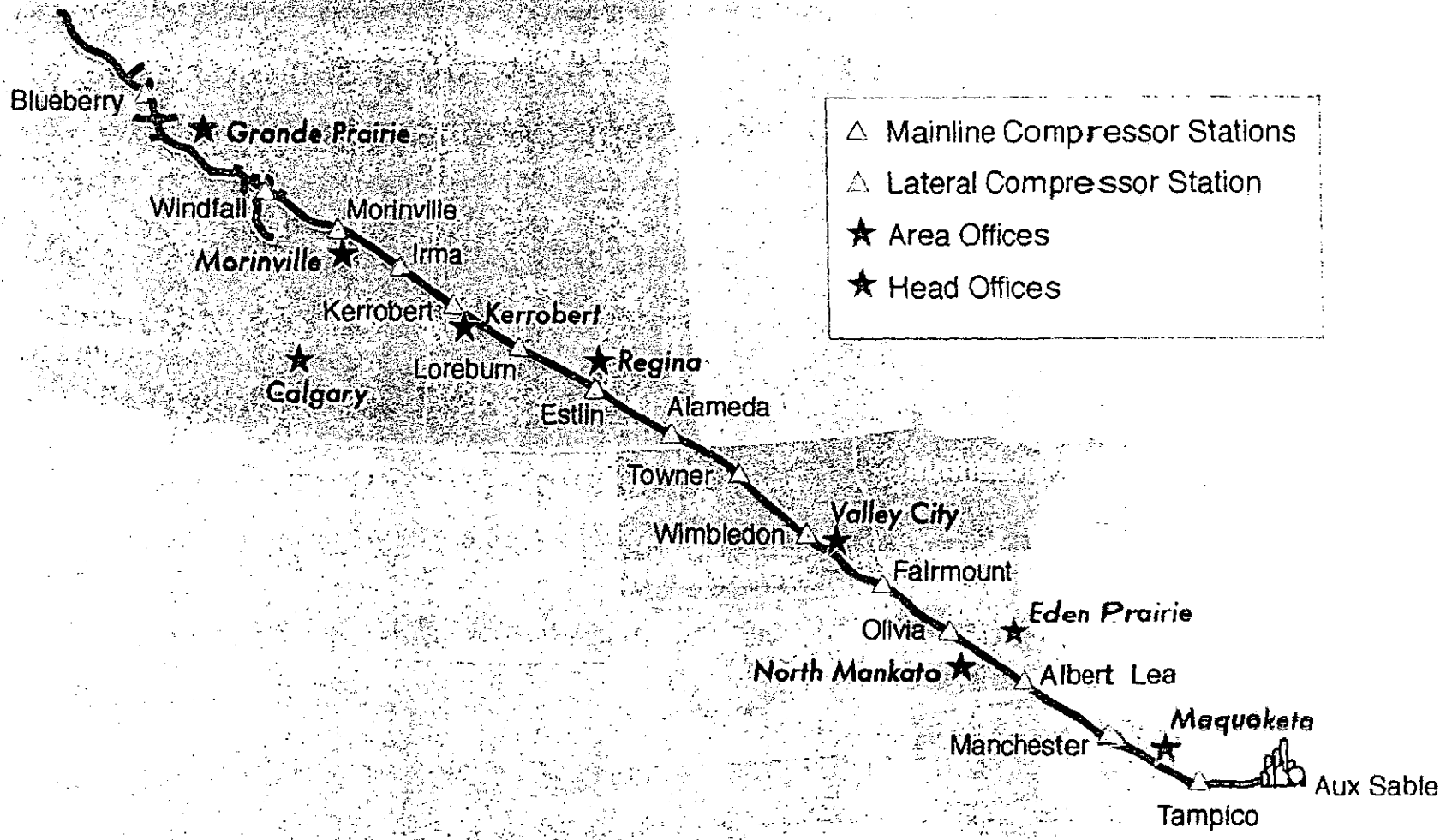
Roberts County

## TRANSCANADA KEYSTONE

The estimated tax revenues to North Dakota counties, based on the revised capital cost estimate, are set forth below:

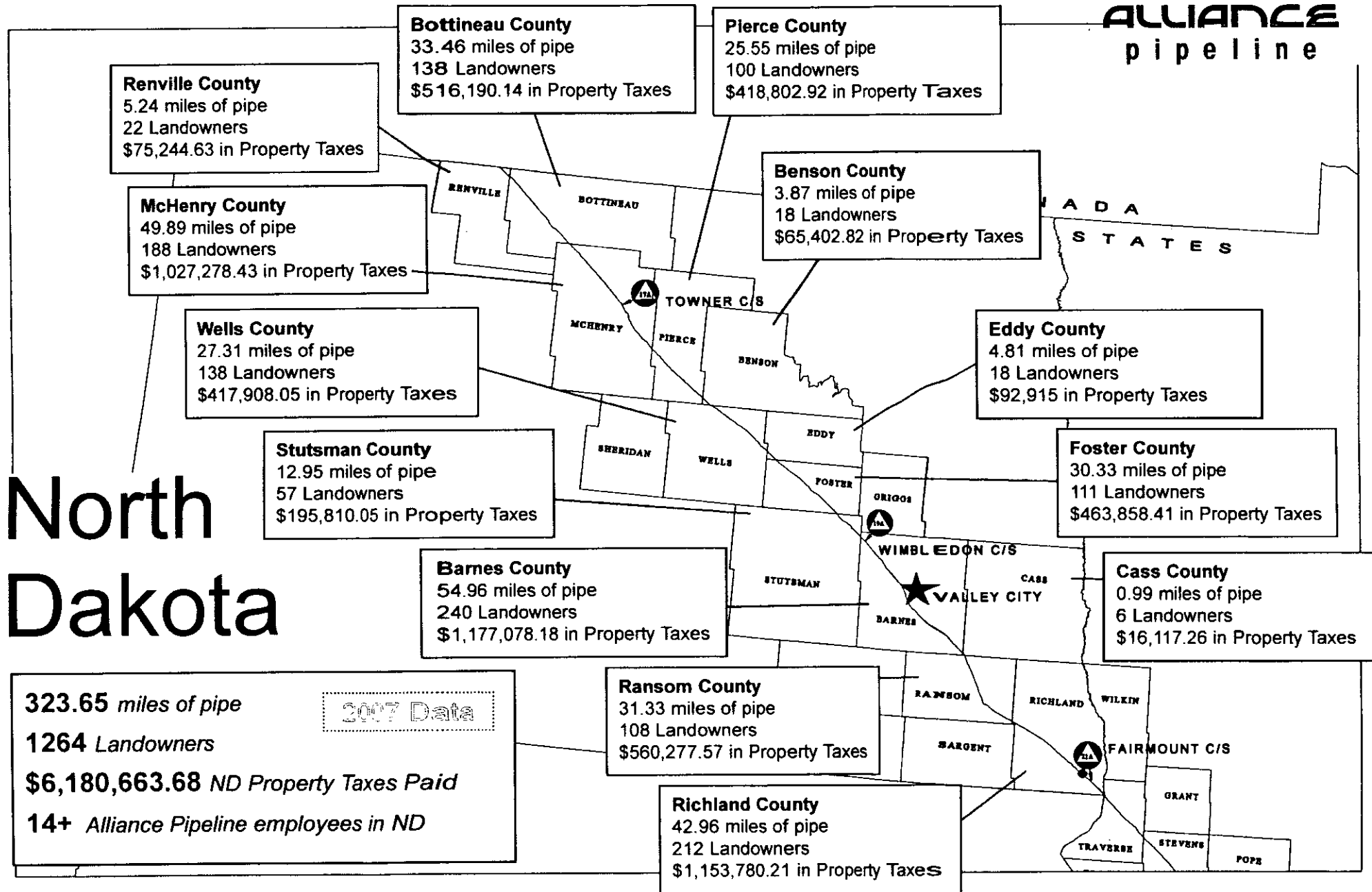
State/County	Estimated Tax Dollars per state/county (\$US) July 2007
<b>NORTH DAKOTA</b>	<b>\$7,650,000 to \$9,385,000</b>
<b>Pembina</b>	<b>\$800,000 to \$1,000,000</b>
<b>Cavalier</b>	<b>\$200,000 to \$250,000</b>
<b>Walsh</b>	<b>\$900,000 to \$1,100,000</b>
<b>Nelson</b>	<b>\$1,400,000 to \$1,700,000</b>
<b>Steele</b>	<b>\$1,000,000 to \$1,200,000</b>
<b>Barnes</b>	<b>\$1,450,000 to \$1,800,000</b>
<b>Ransom</b>	<b>\$950,000 to \$1,160,000</b>
<b>Sargent</b>	<b>\$950,000 to \$1,175,000</b>





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 △ Lateral Compressor Station  
 ★ Area Offices  
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 Dakota**