

2017 SENATE ENERGY AND NATURAL RESOURCES

SB 2047

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2047
1/5/2017
Job # 26601

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Pam Dever

Explanation or reason for introduction of bill/resolution: Relating to the authority of water resource boards to exercise the power of quick take eminent domain.

Minutes:

Attch #1-Derrick Braaten; Attch #2-Derrick Braaten;
Attch#3-Carol Lewis; Attch#4-John Paczkowski; Attch#5-
Bob Banderet; Attch#6-Paul Mathews.

Chairwoman Unruh called SB2047 to order. All committee members were present.

Representative Schmidt: This is the quick take bill. It was in the water topics committee for this interim. In water topics we had six meetings. Five of which were two day meetings. We also had two meetings with the State Water Commission. In those five two-day meetings, we took testimony on the quick take issue and the quick take bills. From that, the committee came out with three different quick take drafts. One eliminated quick take in its entirety. The second option was that water resource districts would have to get approval from county commissioners on quick take issues. The third option a more in-depth defined process of quick take. We discussed all three and eliminated the no quick take rule and also the county commissioner approval. What you have before you is what the committee finalized in our last meeting. We also had discussed with the State Water Commission, so their input in in here, also. That is where we are. Claire Ness, Legislative Council, was our legal counsel and is here to discuss the bill.

Sen. Cook: What was the objection to having elected county commissioners involved in the process?

Representative Schmidt: Some felt the water board were appointed and it was their job to do that. And they did not want to relay that on to the county commissioners. I fell the other way in that I would want the commissioners having to sign off on it. A number of folks did not think that was appropriate for them to do.

Sen. Cook: I think it is not appropriate is having someone who is unelected make decision.

Representative Schmidt: I agree. I support the county commissioners signing off on it. I think they should because they are elected but that was not the wishes of the majority of the committee.

Sen. Schaible: Do you recollect, Representative Schmidt, on the second page of the bill, if negotiations fail, who determines that? Having true negotiations in this effort is the whole point of this issue. Who determines if that fails because that is the key to when the immediate possession takes place. Quick take will go in to effect. Who determines if that fails?

Representative Schmidt: I do not recall. Refer that to Claire when she comes out.
Chairwoman Unruh: I invite Claire to podium to explain the bill.

Claire Ness – Legislative Council (LC): I was the legal advisor to the Waters Topics Interim Committee for the last three meetings. I am neutral and here to answer any questions and provide overview. The current status of the law is that when a water resource board wants to acquire land through quick take eminent domain, they provide a written offer to the land owner and then they can file that written offer and notice and that amount of the written offer with a clerk of the relevant court. Once they do that, they have taken possession of the land. This bill draft that came out of the Water Topics Committee, provides a negotiation process that lasts approximately 75 days to go through the full process before parties reach agreement. During the 75 days, there are deadlines and notifications and communication requirements that the Water Resource Board has to comply with; then at the end of that period, if negotiations has failed, that terminology means that there is no agreement to the compensation for the land that is to be acquired by eminent domain.

Sen. Schaible: You have a 75 day time period, so is that the end gate. If one side has the right to end the negotiation and take possessions, does that promote true negotiations?

Claire Ness: At the end of the 75 days, if there is not an agreement, then the Resource Board can go to the court, deposit the money, file an affidavit that they have gone through the negotiations steps (provide notification, request a sit down meeting, and have other communications during that 75 day period) then they may file the amount of the written offer that they made with the court and take possession of said property.

Sen. Schaible: Issuance of the notice begins the 75 days after which then quick take can be enacted?

Claire Ness: That is correct.

Chairwoman Unruh: We will now take testimony in favor of SB2047.

Mike Dwyre, Water Resource Districts Assoc. of ND: There are 53 counties but 60 water resource districts, usually around county lines. In 1973 the legislature decided that every county would have a water resource district so every county does.

Sen. Armstrong: Is there joint powers and so joint boards have to agree?

Mike: County commission had to sign off and not the legislature. If they d not do their job, legislature can fire the bad commissioners. See line 18 on page 1. We feel this bill is a good tool and we support the procedure. Certified mail is used for notification of meetings and the affidavit is good saying you went through the steps. We just want it in the law.

Sen. Armstrong: Lines 21-23, can it be for less money than appraisal?

Mike: Cannot imagine it would ever be for less than the appraisal.

Sen. Armstrong: Who gets the appraisal?

Mike: Water district would and the water board reaches out to all the landowners.

(10.16)Vice Chair Kreun: Where has quick take been used?

Mike Gave an example in Pembina County where it was used. I believe it was used in Cass a few times but rarely.

(10.41)Vice Chair Kreun: If it is a Federal project you have to have a federal certified appraiser do the appraising in those cases. In Grand Forks, we used it two or three times in 10 years that it took to accomplish that goal. This quick take is a last resort. In most cases you do negotiate with the individual landowners. My question, if the offer is made, and they get to 75 days, there is still an opportunity to negotiate so you do not end up in court, is that right? The negotiations

just do not cut off after the 75 days. It is not as big a hammer as people think it is. It is a tool to get people together, right?

(12.0)Mike: It is usually much longer than 75 days. It is several meetings. This bill would put this process into law. It is a long process and you still may have to go to court.

(12.48)Sen. Roers: Why do we not use the right-of-ways that are already established for roads and utilities?

Mike: Our right of ways for roads are for transportation. If we have to build a drainage project that uses that right-of-way, that is not an authorized purpose for that right-of-way.

Sen. Roers: I am talking about drainage- water supply project. You are allowed to put it in right-of-ways? You have to go on private property?

Mike: You can get permission from the road authority. You just can't do it. In many cases road authorities do give you that right. There is a provision in that agreement if the road is ever expanded, then the utility has to move that line at their expense. So rural water authority will place that line outside the right-of-way just so that they do not have to move it at their expense down the road. e.g- SW Pipeline has 4000 miles of pipeline and there are places they are in right-of-way. There is an understanding that if that road is rebuilt or moved it is their expense 99.9% of those lines are outside that right-of-way.

(15.15)Sen. Roers: gave an example of his land near Hazen. The water districts need some tools to work with in the event someone is difficult to deal with.

Mike: Water Commission does have eminent domain authority for SW Pipeline but it is rarely used; a last resort.

Shane Federicks, Red River Joint Water Resource District, comprised of 14 water districts in Red River Valley. Here in support of this bill. We are comfortable with the terms. I want to touch on Sen. Schaible concerns with regard to negotiation process and length. The 75 days will not start the day we commence the project. We will be negotiating with people long before we ever get to a point of triggering the 75 days. The first thing we do, when developing a project, is try to identify the right-of-ways necessary to accommodate the project. We are engaging those landowners and getting appraisals and a good sense from landowners what a fair right-of-way cost is going to be. The only time we would use this 75 days, is you have a big project that benefits thousands of people and it is crunch time. Say 3 people out of 3,000 do not agree to grant you easement, the 75 day trigger at that point after several months of negotiation. The water managers are landowner and do not want to rush in any eminent domain procedures. They do not want to take landowner rights from people. The measures in this bill will protect against abuse by water board. (16.40-20.43) A further comment – HB1332 last session, county commissioners unanimously told water boards are manager and they are appointed to deal with water issues not county commissioners. They do not want to step in at the last minute and be the bad guy. Sen. Cook is not here right now, but I know he agrees.

(21.44)**David Ashley**, Chair of ND Water Resource District, here in support of SB2047. I have worked with many individuals on small and large projects that benefit 10 or thousands of people. I see a need for this bill as a tool. However, I am also a landowner. I will defend my rights vigorously to protect what I have done for now and future generations. I could be in great conflict but when I see the format that is laid out, it gives the opportunity for water resource districts to move ahead with important public projects, but gives landowners due process in finding out what is proper value for their property and a good voice. So in reality, I am not in conflict with SB2047.

(23.37) **Sarah Levis**, farmer from Trail County-east of I 29. Am here in support of bill. My land is very flat and drainage is very important to raising crops. Within the last three years, we actually had a new drain constructed which resulted in one of our fields having access to a drain for the first time in four generations of our family farm. It is important to remember that when a drain is constructed or reconstructed, there is a democratic process that takes place at the landowner level. Drains are initiated by a petitioned by somebody who could be involved, a study is conducted, and the people who vote whether that drain is constructed are the people who are taxed and receive the benefits from that drain. Only the people who are by that drain get to vote on that project construction. This is a complex bill when you are trying to consider private property rights. How to steward those rights with regards to eminent. I take very seriously and do not like when the government wants to take my land. But, I also have to have the right to proper drainage. The language at the end of this bill does a great job describing the procedures and processes that need to happen before quick take authority can actually happen. If the water resource authority do not have access to quick take eminent domain, it is very possible for these drainage projects to get stopped because one land owner refuses to sell. A very bad thing.

(27.0) **Dennis Reep**, Burleigh County Resource Board: I echo the comments in support of this bill. We are in the process of using this quick take for the MRCC flood control project on the Missouri River. One clarification, we are using it for an easement and acquiring fee title to the property. We are in support of the bill.

Sen. Roers: How many other easements had you acquired in that project and how many are you using this quick take for?

Dennis: Using it on one parcel and not sure on the number on the others.

(27.5) **Derrick Braaten**, Attorney with Baumstark Braaten Law Partners, Bismarck. (see attached testimony #1) I am here on my own behalf. I do not believe the quick take is constitutional. I believe that the regular eminent domain process is enough and no need for quick take. Quick take is a different beast. I have brought an amendment with me.(see attached #2)(38.7)

(39.15) **Arv Burvee**, Richland County Water Resource. Fairmont, ND. I have been on the board for 20 years. I am a farmer and landowner and I have only been involved in quick take once in my entire 20 years. We had serious flood damage on a legal drain. It was within two miles of my farm. I am accessed to that drain. The drain needed to be repaired. It involved one quarter section of land that had four landowners. We needed to get more right-of-way to maintain and repair this drain and open the slopes up. We needed a 3 to 1 slope not 2 to 1. Certain soils need 4 to 1. We found the highest money amount for the one land owner who was questioning and why we used quick domain. The water board wants to be fair because these are friends and neighbors. Three of four were ok with the offer, the forth wanted more money. We had FEMA money involved, so we could use quick take. We told the individual who was holding out, we could use quick take. Within a day or two, he agreed to our offer. Quick take is a very important tool in ND. I do not believe that county commissions should be the governing body in quick take process. It is not right; they are politicians. They are there to serve the people in the counties who elected them. They appoint the water resource board and they manage the water resources in that county. We are the ones who get the pat on the back when people are pleased and kick in the butt when things don't satisfy people. I am in support so please pass.

(44.3) **Roger Zetacha**, from west of Gwinner, ND: I had not been on the water board that many years as Arv has. We had some unique issues involving legal drains. I am a farmer and back in 2013, north of Gwinner, a man drowned. We had 13" pf rain in 24 hours. He was on highway and got washed away. He panicked and had electric door locks. The firefighter tried to get him out but did not work and got swept away and drowned. I am here speaking strictly on safety issues. I understand why this bill is here. I am concerned with the misinformation that comes out when we are doing our job and do not have any agendas that push something. I am pushing safety, so I am out front with that. We always putting out brush fires of people who are opposed to anything. This is a fair bill. Please do not jeopardize safety. It scares me. Thanks.

Chairwoman Unruh: We will take testimony opposed to SB 2047.

(49.07) **Pete Hanebutt**, ND Farm Bureau: In our handbook, we are opposed to takings. That puts me on the opposite side of this. I told the interim committee that same thing. Many of the things brought out by Mr. Braaten are concerns. It is the threat at the end of the road that bothers us. We appreciate the process that has been put in here. It would be nice if the county commissioners could do those things, but we are still anxious at the end of the road. There is that human element that leads to possible abuse.

(50.18) Sen. Schaible : Pete, eminent domain is not being taken away. This bill is about quick take. Is this better than we currently have now?

Pete: It is moving in the right direction.

Sen. Schaible: This bill tries to improve what we have. Some of that discussion has gotten lost. This is about who gets authority to use quick take. Do you agree that 90 days is a concern.

Pete: With the pipeline going through Morton County, where I live, that the process worked well for that. Always certain people never happy.

(51.1) **Julie Ellingson**, ND Stockman's Association: Here to oppose SB 2047. We have standing policy against eminent domain. We are concerned for property rights of our landowner members. I echo Mr Braatan's comments. Part of the process is good. Please consider our concerns. Thankyou,

(53.27) **RaeAnn Kelsch**, Lobbyist Mindak Coal Upstream Coalation: During the interim, I testified several times regarding the certain bill drafts and moving forward with quick take legislation. We were disheartened about the accountability. Elected officials need to make tough decisions. You do not get to give that responsibility to someone else. When you look at property right and using quick take, it needs to be done by an elected official. This bill did move in the right direction, there still are issues that need to be addressed. Quick take has been used recently this past summer, twice, for the inlet structure for Fargo High Hazard Dam. That project has a federal lawsuit against it; plus MN DNR denying permits and also joining the federal lawsuit. That project will probably not go forward. Two individuals lost their property and one is in court fighting for their property. Thankyou.

Chairwoman Unruh: We will hear from agencies.

(56.18) **John Paczkowski**, Assist State Engineer/Water Commission: I am neutral on this bill (see attch #4) We have concerns with line 17 and 18. Deals with federal and state funds. Did the legislature require or not grant specific funding? A bit unclear of language.

Sen. Armstrong: It has been alluded that when quick take is use, all is over. On page 2, line 3, when you do a quick take, if the person who is having land taken away, they have a right to jury trial, according to statute. What happens to the land when taken, does the project move

forward in the 30 days? Or is it held for 30 days? Does this matter. If the project is going forward and you go to trial and the water project is already done, your only option is remedies. Location has as much to do with money damages, sometimes.

(59.37) **John:** I am not an attorney. Maybe Sean can speak to this. I believe the only appeal is for the price that was settled for.

(1.01) **Sean Federicks**, Board Attorney: Once the public agency takes possession by depositing the amount with the clerk of court, that does not mean that negotiations are over. Every time this has been exercised, when we deposit that amount, we continue with negotiations and hold to resolve. The landowner still has the ability to litigate value with the jury trial. Our office, sometimes, we sought a temp restraining order for a judge to determine public necessity. We challenge necessity after we deposit. Some people say this is such a heavy hammer but it is not just the case. Can litigate the value to get fair compensation. Also, you can still challenge public necessity.

Sen. Armstrong: That is kind of my point. Once you get to this point, it is a time issue. You have 30 days to file an appeal. Your jury trial can 60 days out according to statute.

(1.02.00) **Sean:** There is language in there that you can require the courts to place it on the calendar. But in practical terms, it just does not happen. Attorneys in my office talk about this all the time. The attorney can say I can delay this project for 3 years and really hurt your project. So if you do not have quick take and go through regular eminent domain, the attorneys are telling me, we can delay the heck out of the project. Cost your project millions of dollars. Kind of what happens.

Chairwoman Unruh: Seeing no further testimony, meeting adjourned.

Attached testimony #3, #5, #6 came from e mail to committee.

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Committee Work

Minutes:

Attch#1-amend 17.0224.03001-Sen Unruh

Chairwoman Unruh: Call this committee to order. Attendance was taken. All committee members present except Sen. Armstrong.

(1.02) Let's look at quick take, SB 2047. I did pass out some amendments. (see Attch#1) We can talk about those. This was a discussion we had in the interim. I do not remember if we took a vote in the interim bill draft. It was brought to my attention by some of my survey friends. When quick take is used, a blanket easement for an entire quarter or section is used. That can really inhabit a property and further sales of that property if it is not specifically identified. It costs a little bit more for the water resource boards to do it this way, but it is the right thing to do and a protection for the landowner. That is all the amendment does is require them to not be able to keep a blanket easement once the project is finished. Specifically describes where the right of way for the water line.

Sen. Cook: Do they know exactly where the pipe line is going to go at that time?

Chairwoman Unruh: Yes, they do. I do not know if they keep legal descriptions on file but they do have GPS units to get the location of the line. Easy process to go through. The legal description is where the expense is incurred. They have the capability to do that. They just have to go through the one extra step.

(3.25) **Sen. Oban:** What makes it cost more for the water resource board?

Chairwoman Unruh: The legal work that goes in to writing it up. I do not think we will take action today on either the bill or amendment. I wanted to get committee discussion going so that we knew what direction we wanted to head in. I will get some information on the costs of those easements, Sen. Oban.

(4.28) **Sen. Cook:** I am working on an amendment with intern and Claire Ness. Not done yet. My intent is to say after negotiations fail, before they would initiate quick take, it would have to go to the county commission for approval by majority vote and landowner be notified of the meeting. I see they go through the process and the only place the landowner has to apply is district court after quick take is already done. This would give a mediation point where elected officials would hear both sides and then they are responsible to take a vote on it. I think it would

give a lot more peace to the landowner as far as he knows his arguments are being heard by someone that is accountable.

Chairwoman Unruh: This would be a vote by the county commission not just a simple sign off by the chairman?

Sen. Cook: It would be a vote. A required vote by the majority of the county commissioners.

Chairwoman Unruh: In the case of the joint water resource district boards, is there a problem with multiple counties?

Sen. Cook: The county commission in which the land is located.

Chairwoman Unruh: Ok, that makes sense.

Sen. Oban: I was going to ask some questions about this so glad Sen. Cook brought it up. For anyone that was on that interim committee, I understand that this discussion was brought up. I am interested in hearing what the interim committee felt this should not be included. If you heard from any county commissioners, I understand why people would not want to take a vote on it. But there are a lot of things we don't want to take a vote on either.

(6.53) **Sen. Schaible:** We will take it one step forward. This bill actually went through this committee last session. This exact issue ended up in conference committee. The Senate compromised on that conference committee was exactly that point. This was discussed all last session. Do not confuse quick take with eminent domain. This is about who gets the authority to use it. I think the House killed it. The original bill was put into the OMB budget at the end of session and passed. The governor vetoed. That is what prompted the interim study. Quick take should be used only for projects in immediate need. Quick takes should not be used for projects that take a long time. E.g. Fargo Diversion. It was a very long project for years and years. Quick take was used to move the project ahead. A sore subject. It's a hammer. It is like eminent domain except quick take takes immediate possession of the land. After quick take, possession goes to the project, not landowner. The three things that came out of the interim was to remove quick take from the discussion; to define who could use quick take on certain things and try to make sure it was an immediate need to use. This came toward the end. It certainly does not fix what we are trying to do, but it is better than what we have now.

(11.25) **Sen. Oban:** Does anyone know who has the authority in Century Code for quick take?

Sen. Schaible: Look in sections that SW Water has water delivery methods have it. There is a list.

Sen. Oban: So is there some merit to the discussion that Derrick Braaten brought forward to add this same language if we were to move forward to laws.

Sen. Schaible: Like SW Water or these things is more an easement not possession. Creating a dike or dam is actually possession. The definition has changed on the criteria of the project. It became difficult to understand. There are 4 or 5 that were taken and given right to quick take under the law. This interruption was expanded. That is what brought the web of this whole last two sessions.

Sen. Cook: Sen. Schaible, if there is a place in Century Code that gives a political subdivision the power of eminent domain, does that mean they have quick take? Or is it listed separately?

Sen. Schaible: Yes. Another reason why this bill came forward because it was an interpretation of who had the power for quick take. Part of that came from where the money came from, state or federal or water commission dollars.

Sen. Cook: I just want to point out that I was Morton County Housing Authority for over 20 years and I have the power of eminent domain and I do not want it. I am relieved that we don't have the power of quick take.

Sen. Roers: I want to follow up on the title concern on the legal description. I have experienced that lots of easement are put into place and then never removed. Down the road, 20-30 years,

when you sell the land, someone will bring this easement up that may or may not be used as a cloud on the title. I think there should be some language included that indicates that if the easement is not used for its intended purposes, it automatically is removed. So the owner of the land does not have to track down, 20-40 years, all the history and the people to get an easement removed that is no longer being used. I suggest we have legal look at easement termination language in favor of the landowner.

Chairwoman Unruh: That sounds good if you want to work on it with intern. That was my concern. We need exact legal descriptions of the land so you know what you are talking about. I have dealt with these section blanket easements, and they are very difficult and hard on owners. I will do that.

(16.21) **Vice Chair Kreun:** Comment then question. Your comments are dead on, Sen. Schaible. (gave an e.g.) A project that is 10 years long, if you can't look down the road a few years as you go through your project, to go through the legal process and negotiations, where would the quick take come into place. You are working 10 years to build our levy system. To your proposed amendment, does the judge initiate quick take? So who would the final say if we put the commission in there and they vote 'no' and judge says 'yes' who has the authority?

(18.40) **Sen. Schaible:** We looked at giving that authority to the judge but courts are over filled and they would have to learn it. So that is why we went back to county commissioners. The judge still makes the determination of quick take, but the process won't start unless commissions sign off. We put that into law.

(22.0) **Sen. Oban:** What happens when quick take is used? I understand it is for longer term projects, what happens if project is done. Does the land ever go back to landowner?

Vice Chair Kreun: In our case for the levy system, we purchased that land. It became part of the levy project, the flood protection project. We purchased 1400 pieces of property from individuals. The land is underneath the levy system. Not an easement. When you get into federal government there are different ways of acquiring the lands. Different rules apply each time. I do not think we are much federal involvement in this or not. We purchased land and did not go back to individuals.

Sen. Oban: You did not use quick take?

Vice Chair Kreun: Out of the 1400, we only ended up in court with 3 or 4 landowners. One house no one knew who owned it not even bank. That was the worst to buy. Went to court with three business and we won all three in court because we had gone through this process from the beginning and gave them way more money.

Sen. Oban: So quick take would be similar? Where the entity is purchasing the land?

Sen. Schaible: It can be any of the above. These projects are all different. This section deals with water resource boards. Yes, it can be a diversion. Quick take was used three times in Fargo Diversion to start their project. It is long term. They used it to get the federal funding. I do not agree that quick take should have been used in that instance.

(22.5) **Sen. Roers:** It does allow for easements as well as buying the land, Sen. Oban. That is why my comments came in. Over the year's things change. A drainage ditch today may not in 10-20 years from now. Once it ceases to be used for original intent, it should be removed.

(23.35) **Chairwoman Unruh:** My experience with SW Water and dealing with their easements, the company I work for and has given easements for the lines. They purchased the things from us for a dollar and we required they give us specific easements. We knew exactly where the line was. An easement for a dollar is how SW Water does it.

(24.14) **Sen. Oban:** On page one, line 17-18 we heard some discussion that our state funds have been appropriated but that was not clear. The appropriation going to the water commission

then the water commission used some for projects, is that right. Does that rub some people the wrong way? Not sure if that is huge concern.

Sen. Schaible: Yes, the original discussion in law was that quick take was used for certain sections of where the money came from. The original intent expanded. The interpretation was not clear. The Fargo Diversion assumed they had authority to use quick take.

Sen. Oban: So we may want to look into clarifying and probably not easy.

Chairwoman Unruh: Go ahead, Sen. Oban, you can try. It is all yours.

Vice Chair Kreun: They have federal, state, and other funds available so that is why it is difficult to define when it is appropriated. Sometimes it does not go through the State Water Commission for some of these projects.

Chairwoman Unruh: If we strike out "appropriated" and insert "utilized" would that get rid of some of the concern?

Sen. Schaible: I cannot recall the exact section of law, but most of these are defined. It was just this one area – water resource boards. We looked at defining by specific projects but it was who would determine. If you authorize the project, then that gives them the right to quick take. No workable solution with all the different types of money. Dilemma.

(28.51) **Chairwoman Unruh:** Great discussion this morning. We will wait for Sen. Cook and Sen. Roers amendments and bring it up next week. Committee work concluded. (29.30)

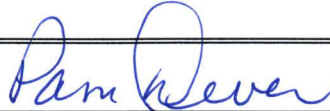
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Chairwoman Unruh : Talk about SB 2047. I believe we had some amendment being worked on.

Sen. Cook : (.25) Here are amendment. I noticed you need to take out 'may' and put in 'shall'. After the 75 day and they have not agreed, and the water district would like to do quick take. They set up meeting with county commissioners for the next meeting to bring to their addenda, where both parties have a chance to plead their case. The county commission can make the decision and then the process goes on. This gives one last hearing for the landowner to stand before elected officials and voice their concerns.

Chairwoman Unruh: Where does this get inserted?

Sen. Cook : page 2, line 17.

Chairwoman Unruh : After the underscored comma, so after the word 'fail'?

Sen. Cook : I did not compare this to the bill. Yes.

Chairwoman Unruh : Just making sure that the language that remains that says that the district may take immediate possession is in the right spot.

Sen. Roers (3.38) Sen. Cook, where does it say after the 75 days. I don't see that?

Sen. Cook : By where you insert it into the bill. Go to page 2, line 17 and insert after 'fail'. We are not removing anything from the bill just adding this language.

Chairwoman Unruh : I favor these amendments.

Sen. Cook : I move amendment 17.0224.03002.

Sen. Schaible : I second.

Vice Chair Kreun : Do we need a time frame on 'sufficient notice'? Or is it good.

Sen. Cook : I hope it is good. The first amendment did not make any reference to notice. Two parties have to be notified for it to be sufficient in my mind. Water district and landowner. The county commission is already there.

Chairwoman Unruh : We will do a **voice vote**, with striking may and insert shall. All Yes, -
0- No Amendment is PASSED

Chairwoman Unruh: We now have before us SB 2047 in its amended form. There is another set of amendments handed out by Sen. Roers.

Sen. Roers : (7.25) It is a house keeping thing. The termination of an unused easement is a problem. This happens many years down the road when the parties originally were involved in the easement are gone or have sold the property. We need to add automatic termination language if the original easement is not being used for intended purpose. This is why this amendment.

Chairwoman Unruh : Fairly straight forward.

Sen. Cook : I think it is good idea. I think it should apply to all easement not just district.

Chairwoman Unruh : Any motions?

Sen. Roers : I move this amendment.

Sen. Armstrong : I second.

Chairwoman Unruh : Any discussion?

Sen. Cook : I am tempted to say I will vote yes on this only if Sen. Roers promises to introduce another bill to make sure it takes care of all situations.

Chairwoman Unruh : That is unacceptable in the committee. **Voice vote** will be take on amendment 17.0224.03003.

All Yes, -0- No amendment is PASSED

Chairwoman Unruh: I brought an amendment forward last week. We talked about this. It applies to easements requiring a specific tract and not a blanket easement. Sen. Oban requested I find how much that cost, and I did not follow up on that. Sorry. Maybe a couple of thousand dollars.

Sen. Roers : I can give you a range. Not very much

Sen. Roers : I move a do pass on amendment 17.0224.03001.

Sen. Armstrong : I second.

Chairwoman Unruh : Let's do **VOICE VOTE**. All Yes, -0- No, amendment PASSED

Chairwoman Unruh : Have SB 2047 before us as amended. Wishes?

Sen. Armstrong : MOVED A DO PASS

Vice Chair Kreun : I SECOND

Roll call was taken: YES 7 NO 0 -0- ABSENT **Bill Passed**

Sen. Schaible will carry the bill

January 6, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047.

✓ Page 2, line 17, after the underscored comma insert "the district ^{shall} may request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick-take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner sufficient notice of the meeting to allow the landowner to attend. If the county commissioners approve the use of quick-take eminent domain by a majority vote."

Renumber accordingly

[COOK]

amending the LC amendment.

voice vote!

x

January 9, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047

Page 2, after line 30, insert:

✓ "(5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired."

Renumber accordingly

Roers am. adopted. as is

voice vote 2

[also 17.0224.03001]

January 5, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047

Page 1, line 23, after "compensation" insert ", which includes a specific description of the exact location of the right of way."

Page 2, line 18, after "way" insert ", but not a blanket easement."

Renumber accordingly

amended accept



voice vote 3

January 13, 2017

1/13/17 DO

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047

Page 1, line 23, after "compensation" insert ", which includes a specific description of the exact location of the right of way."

Page 2, line 17, after the underscored comma insert "the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner sufficient notice of the meeting to allow the landowner to attend. If the county commissioners approve the use of quick take eminent domain by a majority vote."

Page 2, line 18, after "way" insert ", but not a blanket easement."

Page 2, after line 30, insert:

"(5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired."

Renumber accordingly

Roll Call Vote #:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0224.03002

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Cook Seconded By Sen. Schaible

[illegible]

Total (Yes) 7 No 0

Absent -0-

Floor Assignment *NA*

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

Passed

Roll Call Vote #: 2

BILL/RESOLUTION NO. SB 2047

Committee

☐ Subcommittee

17.02.24.03003

☐

Seconded By Sen. Armstrong

[illegible]

No -d-

Absent -0-

Floor Assignment *NA*

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

ate intent:

passed

Roll Call Vote #: 3

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0224.03001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Roers Seconded By Sen. Armstrong

[illegible]

Total (Yes) 7 No 0

Absent -0-

Floor Assignment NA

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

Passed

Date: 1/12/17
Roll Call Vote #: 4

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2047

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0224.03005

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Armstrong Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	✓		Sen. Erin Oban	✓	
Vice Chair Curt Kreun	✓				
Sen. Kelly Armstrong	✓				
Sen. Dwight Cook	✓				
Sen. Jim Roers	✓				
Sen. Don Schaible	✓				

Total (Yes) 7 No -0-

Absent -0-

Floor Assignment Sen. Schaible

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

REPORT OF STANDING COMMITTEE

SB 2047: Energy and Natural Resources Committee (Sen. Unruh, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2047 was placed on the Sixth order on the calendar.

Page 1, line 23, after "compensation" insert ", which includes a specific description of the exact location of the right of way."

Page 2, line 17, after the underscored comma insert "the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner sufficient notice of the meeting to allow the landowner to attend. If the county commissioners approve the use of quick take eminent domain by a majority vote."

Page 2, line 18, after "way" insert ", but not a blanket easement."

Page 2, after line 30, insert:

"(5) If ownership of a right of way has not terminated, ownership of a right of way acquired under this subdivision terminates automatically when the district no longer needs the right of way for the purpose for which it was acquired."

Renumber accordingly

2017 HOUSE ENERGY AND NATURAL RESOURCES

SB 2047

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2047

3/2/2017

28592

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the authority of water resource boards to exercise the power of quick take eminent domain.

Minutes:

Attachments 1-5

Vice Chairman Damschen: Called the meeting to order and roll call was taken.

Rep. Schmidt: SB 2047 is a product of the water topics committee. The water topics committee got this assignment by legislative management as a result of the Gov. Dalrymple's veto. The water topics committee conducted many hearings and taking testimony in Watford City, Minot, several in Bismarck, and held 2 meetings with the State Water Commission. Rep. Anderson and Rep. Porter were part of the water topics committee. There are 3 things SB 2047 does. It establishes a negotiation process which is more in length than what the previous was. It establishes a county commission approval as needed if negotiations fail and it also has added another section regarding termination of district ownership. This committee also reviewed HB 1244. The difference between the 2 bills is SB 2047 adds the negotiation and termination of ownership and does not include a direct appropriation. HB 1244 that passed out of the House, indicates directly to the district by Congress or legislative assembly. That identifies in order to do quick take you had to have 1 of those 2 criteria met.

Vice Chairman Damschen: When a water board goes ahead with a project often they start looking for an easement to maintain and build a drain. When they exercise eminent domain for an easement, does that actually happen or do they take ownership?

Rep. Schmidt: the eminent domain is a different timeline for ownership versus the quick take if that's what you're referring to.

Vice Chairman Damschen: It isn't really necessary to own the land for an easement even if they want to quick take.

Rep. Schmidt: that's correct. I think this is going to be tested to a degree when we're talking about the Fargo diversion, there's that Cass County can go into Richland County and obtain those easements. I think that's going to be a real challenge and be an issue that needs to be

addressed. We did give that authority to water boards to do that, to go into one other water board to obtain those easements.

Rep. Keiser: I had the same concern in Subsection 5 on Page 3. Who determines this and what criteria are they going to use? Once a political subdivision gains access to this, they can delay implementation, they may change their mind, not build the project, but may build it in the future and thus can hold forever and are not going to give it up easily. We have no criteria established for when they would have to give it back.

Rep. Schmidt: You are correct. The other thing that bothers me is that we're away that, back to the Fargo diversion, that quick take was used to obtain some land from some individuals for the purpose of a structure. What would happen if the diversion doesn't get built? What happens to that land that's already been obtained? I think this kind of addresses that but I would agree with you Rep. Keiser, I think this needs to have some criteria on it.

Rep. Seibel: Page 2 Lines 20-21. County Commissioners shall hold a public meeting and give the landowner sufficient notice. What is sufficient notice?

Rep. Schmidt: Good question. I believe it is defined and the Legislative Council is not here to help me with that.

9:42

Greg Larson, chairman of Burleigh County Water Resource District, presented Attachment #1 in support of the bill. In answer to your question Rep. Seibel, the notices are 3 weeks, 21 days.

12:58

Monica Zentgraf, secretary-treasurer of Richland County Water Resource District, presented Attachment #2 on behalf of the Richland County Water Resource Board. I'm asking you to support SB 2047. The quick take is not used unless absolutely necessary. The one thing I want to mention about 1244, is the amendment that was added to that about the direct allocation from Congress or from the state. We do NOT get direct allocations. Our allocation comes through the State Water Commission. So if you add that particular amendment, that same language to this bill, or even under that 1244, you have virtually taken our quick take away. It would be like saying, "no you're not going to have quick take." That is the one thing. You talk about the Fargo Moorhead diversion. That's direct allocation. That is the one case where there's direct allocation from Congress. Otherwise the water resource districts aren't getting that.

Rep. Keiser: The example you gave, length negotiation with the parties and couldn't eventually reach satisfaction, so you utilized quick take. It seems to me that's not the way quick take should be used. That's the way eminent domain should be used and I recognize it takes longer. But wasn't quick take really established for true emergencies that you weren't able under any condition to go for the 2-year period, you needed to take action. Now I know you wanted the project finished, I know all those things but, are we misusing quick take?

Monica Zentgraf: I couldn't answer the original intent of quick take was. In this particular case, I'm thinking it was FEMA damages. We actually never did institute quick take. We said this is what we're going to have to do but actually never did. The best I can tell you is the water resource districts do every possible thing they can to avoid use quick take. They go above and beyond the prices they pay for the land. If we go through quick take or regular eminent domain, it's an easement not a deed. They'd retain some rights there.

Vice Chairman Damschen: further questions? The land you exercised this on, was it farmland?

Zentgraf: it was farmland.

Vice Chairman Damschen: Did it stop the use of the land or temporarily construct a drain across it or what was it.

Zentgraf: That particular one was a reconstruction, we had to lay the slopes back. It was land they would no longer be able to farm. They were very willing to sell to us. They signed a deed. A deed for them is a better deal if they're not going to be able to use the land, don't pay taxes, take it off the tax rolls.

21:31

James Haugen, McCloud ND, Water Resource Board member for 13 years. I'm in support of HB 2047. We like to have that tool in our toolbox and barely used. We offer a fair market value for land we use for reconstruction, we have it appraised. Most of the farmers are happy to get improvements to their drain.

Rep. Mitskog: You're very familiar with Richland County and Cass County. With your experience on the water resource board, do you have any concerns about aggressive behavior or actions on behalf of one resource board? I think this is a nice tool but in the case of the northern part of Richland County, are there any concerns that you or other board members share that this could be abused by another water resource district?

Haugen: well yes that's dealing with Fargo Moorhead diversion and Cass County going into Richland County, if that's legal, I don't know if it is.

23:58

Mike Dwyer, represents all Water Resource Districts in ND, supporting this bill. This bill was carefully studied by the interim committee. Last year up in Pembina County there was a case where quick take was used. The record demonstrated the water resource board had gone through an exhaustive negotiation and ended up using quick take. The interim committee wanted to put into statute all of the procedural requirements. There's a requirement for an appraisal, certified mailing of the appraisal to the landowner. It is just for right of way, not for a fee title. There's a requirement for a certified mailing of a request for a meeting. The third step is once that meeting has taken place and the negotiations failed, then there's a 3rd certified mailing required that we're going to exercise this authority. The request or requirement for approval of the county commission was added by the Senate Natural

Resources Committee and added an additional requirement of a public meeting by the County Commission. The bill you considered earlier just required County Commission approval but this requires County Commission approval after a public meeting where they give notice to the landowner. Then the Senate added the provision about terminating an easement. These water resource boards have no desire to hold an easement past what is necessary for a project. In the east it's mostly surface water management and in the west it's water supply. Water boards do want to be completed transparent, fair, honest, and provide every opportunity for notice. Rep. Mitskog asked about the Fargo Moorhead Diversion. It's a big project, controversial, and whatever the final outcome will be. One other, the Souris River Flood Control Project, the Souris River Joint Water Board is 4 water resource districts of Souris River Basin, McHenry, Bottineau, Renville and Ward. They are very concerned about keeping this authority because that is a basin wide project and clearly there will be a landowner or two somewhere along the way. There is urgency in some of these cases because of funding is going to disappear. The acquisition of the easements is always after the funding has been secured. Sometimes permits or acquisition of easements holds up these projects. We think we'd like to have an opportunity to try. I don't know that quick take will be used. The Cass County situation, one time in Richland County and one time in Pembina County, one time in Burleigh County, other than that, this authority has not been used. It's a rare thing. The amendment to HB 1244 would actually remove the authority for quick take because all of the funding for projects that water resource districts do comes through the water commission, there's not direct appropriations. HB 1244, Page 1 Line 18, first word is appropriated, I don't know how you can be more clear. Appropriated means the legislature has appropriated the money and it comes through the water commission. I just emphasize that water management in the east is a difficult process. In 2011 there was record flooding in Beulah, Hazen, Linton, Valley City, Fargo. Water managers are assigned these difficult situations to figure out the right solution.

Rep. Mitskog: You say it's rarely used but the potential for the project in the east, for it to be used more frequently, in your opinion, do you see this could be the case?

Dwyer: I would hope the Cass County Joint Board would only rarely use. Hopefully it would be strictly be a last resort.

Rep. Anderson: has there ever been a case where they've been able to stop a drain?

Dwyer: Ultimately you have either eminent domain or quick take. I'm not aware of. For your information, assessment drains require a way more vigorous process than any other assessment process. The water resource district assessment drains, 50% of the, a majority of the votes have to be in favor of the project. You've put in place a much more rigorous assessment process for water resource district and assessment drains. If an assessment drain is approved by a majority of the assessed votes, ultimately it will probably happen.

Rep. Keiser: the comment has been made, "we've rarely used it, we've just not needed this", it seems to me if that's true, then things have been working well or there's a problem that required us to address the issue in this bill. If there is a problem that's been identified in this bill, how are we addressing that problem?

Dwyer: 2 years ago this issue came up not with the bill introduced about quick take. It came up and was an amendment this committee added just before crossover. So the subject of quick take did not have a hearing. It was a separate drainage bill that dealt with a number of other things. A landowner from Pembina County came in and said the Pembina County had abused this authority. The Senate did have a hearing on it and the Pembina Water Resource District came in and set forth all the steps they'd taken before they finally exercised quick take. It was a situation of a drainage project and 1 landowner holdout and they wanted to build that construction season. They came back to this committee. You did have a hearing because the Senate had changed what you did. The landowner and Pembina County Water Board came in and set forth all the things they had taken. None of those were in statute. The conference committee couldn't agree what the outcome should be and put it into a study. The same amendment you added to 1244 was added to OMB bill. So quick take was taken away. Gov. Dalrymple vetoed and said it should be studied. The committee had discussions and agreed if the situations in Pembina County and one in Sargeant County, if the water boards are indeed following these but there's no statutory requirement for specifically what they have to do, the Interim committee said let's put in place specific a statutory procedure so we don't have to wonder whether the water resource districts are following these procedures. Now we know they have to and can't use it. Page 2, when you file your deposit with the District Court, you have to have an affidavit you've done all these things. That would probably be helpful in the Cass County situation as well. The Senate Natural Resources added the County Commission approval and terminating the easement and specifically defining the easement. They basically said let's put it into statute so we know the water resource boards have to follow them.

Rep. Keiser: it's interesting given the nature of our country where we're at in terms of less regulation, all this bill really does is put in additional regulatory requirements for quick take so there's more transparency apparently. How would it affect the Pembina case?

Dwyer: The legislative record would demonstrate this. The Pembina County Water Resource District came in and showed all the steps they'd taken, 1) an appraisal, 2) 3 different times of certified mailing. Water Resource Districts want to make sure their neighbors have full notice and opportunity.

Rep. Devlin: The actual use of quick take is rare but what I think is not rare is the threat of quick take. That's what we hear from landowners. Since they threatened if we don't do this, we're going down the road of quick take, you'd better sign. I know of retired lawyer that used to work for the water resource boards quite often and his comment was, I've successfully used the threat of quick take many times to get right of way easements signed. That's the concern here. It's isn't that they're rarely used, it's the threat that bothers our landowners. We need to address that.

Vice Chairman Damschen: Further testimony? Opposition?

40:18

John Paczkowski, Assistant State Engineer, State Water Commission: presented Attachment #3. Just seeking clarity on Page 1, Line 18, the word "appropriated" and what does that mean.

Rep. Keiser: Would you be acceptable to striking appropriated and state, "made available" without designating the source?

Paczkowski: Not being an attorney, that may clear it up.

Rep. Keiser: Moneys can come from a variety of sources for these projects. An easy term to simply say what we mean, when it's made available, regardless of the source, you have the authority.

42:00

Paczkowski: yes that would probably clarify that

Rep. Keiser: If anybody in the audience to comment on that that is a lawyer

Mike Dwyer: A word appropriated is so clear in what it means. Both Congress and Legislature appropriate money. We do have a disagreement with the water commission on this issue. We think it's clear. The terms made available should be broader. If you would prefer to use that, we would have no objection to that. In Line 17, federal or state funds, we can't use it if there's no state or federal funds.

Rep. Keiser: I do kind of understand the issue, "appropriated" implies it's appropriated for a project, and that's not the way this works. We do need to address that issue, otherwise I'll take you to court or someone will and say, no it wasn't appropriated for that, then we'll be hung up again.

Dwyer: have been made available would certain take care of that.

Vice Chairman Damschen: Further questions or comments? If not we'll closed the hearing on HB 2047.

Testimony submitted but did not have anyone testify is as follows:

- (4) Ronny Hartl, Ransom County Water Board manager, in support
- (5) Julie Ellingson, ND Stockmen's Association

2017 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2047

3/23/2017

29578

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the authority of water resource boards to exercise the power of quick take eminent domain.

Minutes:

Attachments 1

Chairman Porter: Called the committee to order on SB 2047. HB 1244 prior to crossover had to do with quick take. This bill was an interim bill. He's been working with the water association and other involved to come to this agreement.

Rep. Weisz: presented an amendment, Attachment #1.

Rep. Keiser: I like what you're proposing but seems to almost create another problem. If it's a landowner that truly opposes it, and it's an essential piece of access required, it can get into he said she said and come out and say they threatened me with that, even though it didn't occur will have no ability to know. Once they start he said she said quick take is taken off the table and what impact will that have on the project, and what are the alternatives and timetable for alternatives?

Rep. Weisz: You raise a legitimate point. That certainly can occur I can't deny that and the county will have to weigh the relevance or weight of what they thought. Did this occur or how credible is the testimony from each side. That's part of the public hearing process is. Is the water resource board doing the things they should have.

Chairman Porter: further questions? Discussion?

Rep. Lefor: move to adopt the amendment

Rep. Seibel: second

Chairman Porter: We have a motion and a second to adopt the amendment 4001. Discussion?

Rep. Seibel: This is the biggest complaint I get from landowners. They're going to do a quick take anyway. I think that takes that off the table which will make these negotiations a lot better for both sides, so I'm going to support the amendment and bill.

Chairman Porter: Further discussion? Voice vote. Motion carries.

Rep. Devlin: I would move a Do Pass as Amended.

Rep. Keiser: second

Chairman Porter: I have a motion for a Do Pass as Amended and a second. Any further discussion? Roll call vote. 13 yes 0 no 1 absent. Motion carries. Rep. Ruby is carrier.

3/23/17 Dr

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2047

Page 1, line 16, after "is" insert "an easement for"

Page 1, line 18, overstrike "appropriated" and insert immediately thereafter "made available"

Page 1, line 21, after the second "the" insert "easement for the"

Page 1, line 22, replace "Sending" with "Conducting informal negotiations for not less than sixty days."

(b) If informal negotiations fail, the district shall engage in formal negotiations by:

[1] Sending"

Page 2, line 3, replace "(b)" with "[2]"

Page 2, line 8, replace "(c)" with "[3]"

Page 2, line 10, remove "in thirty days"

Page 2, line 17, after "(3)" insert "A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way."

Page 2, line 17, after "If" insert "formal"

Page 2, line 21, replace "sufficient" with "thirty days"

Page 2, line 22, after the underscored period insert "After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain."

Renumber accordingly

Date: 3-23-17Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2047

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or
Description:17.0224.04001

Recommendation

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐

Motion Made By

Rep. Lefor

Seconded By

Rep Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*voice
vote
motion
carries*

Total (Yes) _____ No _____

Absent _____

Floor

Assignment _____

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

4601

Date: 3-23-17Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2047

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or
Description:17.0224.04001

Recommendation

☐ Adopt Amendment☒ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☒ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐ _____

Motion Made By

Rep Devlin

Seconded By

Rep Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	AB		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	✓		Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 13 No 0Absent 1

Floor

Assignment

Rep Ruby

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

REPORT OF STANDING COMMITTEE

SB 2047, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2047 was placed on the Sixth order on the calendar.

Page 1, line 16, after "is" insert "an easement for"

Page 1, line 18, overstrike "appropriated" and insert immediately thereafter "made available"

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Page 2, line 17, after "(3)" insert "A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way."

Page 2, line 17, after "If" insert "formal"

Page 2, line 21, replace "sufficient" with "thirty days"

Page 2, line 22, after the underscored period insert "After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain."

Renumber accordingly

2017 CONFERENCE COMMITTEE

SB 2047

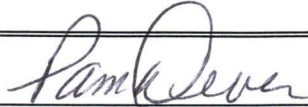
2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2047
4/6/2017
Job #29967

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Conf #1, Attch#1=Sen. Schaible;

Present: Sen. Schaible(chair), Sen. Cook, Sen. Kreun
Rep. Anderson(chair), Rep. Damschen, Rep. Ruby

Sen. Schaible: I ask the House to explain the changes.

Rep. Anderson: On page 1, on line 16, we put 'an easement for right-of-way' in there. We thought that was better language. Down below, we changed 'appropriated' to 'made available', because can the board really appropriate money? Isn't it appropriated by someone else? (.56) On line 23, we also made a change and set a time frame for conducting informal regulations for not less than 60 days. We set up a process if informal negotiations fail, the district shall engage in formal negotiations and put 'sending' in there to receive notice.

Sen. Schaible: What is the reason for the 60 days?

Rep. Anderson: We wanted a time frame where it was enough time for an absent landowner for a time could have time to come and respond. Someone may not be in ND. Next big change is on line 22, we made a change there. We talked to a lot of people had been intimidated in making a decision during the process. Whoever wanted the right to the water way or easement would say it does not matter what you do, we will get it anyway with Quick Take. We did not like that process. Next change is page 2, line 29, it explains about the threat of Quick Take. Any other House members want to respond? (4.20)

Sen. Schaible: I like that change. We had a total time frame. Do you know what it ends up now? You have the 60 day and another 30 days in there. From start to finish and do Quick Take, do you know the number is now?

Rep. Anderson: I think it is 90 days. They could go to day 59 and then have 30 days to respond, if I am reading that right. (5.08)

Sen. Schaible: I think before we were at a 90-day window. Assume this is the same.

Rep. Ruby: The 60 days is informal and then if nothing done within 60 then written appraisal gets an offer. If there is nothing 15 days later and no response. It is receipt mail so they will know if it was received. 15 days from that, they go into request for a meeting. If no agreement or response in that 15 days, then they can go to Quick Take. It does hits the 90-day mark.

Sen. Schaible: Any comments?

Sen. Cook: Is there not another 30 days down here once it gets to the county commission? Page 2, line 27 and continuing. (6.42) I believe it stretches to 120 days.

Rep. Ruby: That 90 days is the limit for Quick Take. Once they get to that point. We had another bill that said County Commission had to approve. The commission has to give the landowner 30 days' notice before the public hearing.

Sen. Schaible: We may have to check with LC. To get a total time frame. That bill was killed. I don't see major disagreements. Committee, please consider what I am handing out for you to read. (see Attch #1) I had a request to add the same language that we have in this to go

Rep. Anderson: So the big change is on page 3, the new language.

Sen. Schaible: The bill we have before us, deals with sub-section 2. But the same chapter in section 12, maybe should also be in there. We need to look at. Adjourn.

2017 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB2047
4/7/2017
Job #29996

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Minutes:

Conf #2; Attch #1 = Sen. Schaible;

Present: Sen. Schaible(chair), Sen. Cook, Sen. Kreun
Rep. D. Anderson(chair), Rep. Damschen, Rep. Devlin

Sen. Schaible: I passed out a sheet outlining the days it would take. (see Attch#1) It is contingent on mailing time and how long it takes for them to respond. For you to see where we are with that. The sheet I gave you yesterday, we don't need. That is a different kind of taking. Any other questions?

Rep. Anderson: I am fine with it.

Senator Kreun: That basically takes out what we were taking about yesterday?

Sen. Schaible: I never submitted it as an amendment. All we have is the bill as presented to us as it was. Any changes? (1.32)

Sen. Cook: I move the **Senate accede** to House amendments.

Senator Kreun: I second.

Sen. Schaible: We have a motion that the Senate accede to the House and adopt this SB 2047. Any discussion? Take the roll. YES 6 NO 0 -0- absent

Motion passed.

Adjourn

Date: 4-6-17 4-7-17
Roll Call Vote #: 1

2017 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2047 as (re) engrossed

Senate Energy Natural Resources Committee

- Action Taken ☒ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Cook Seconded by: Sen. Kreun

Senators	Y	N		Yes	No	Representatives	Y	N		Yes	No
Sen. Don Schaible, (chair)	/	/		✓		Rep. Dick Anderson (chair)	/	/		✓	
Sen. Dwight Cook	/	/		✓		Rep. Chuck Damschen	/	/		✓	
Sen. Curt Kreun	/	/		✓		Rep. Matthew Ruby 1st	/	/			
						Rep. Bill Devlin 2nd mtg	/	/		✓	
Total Senate Vote						Total Rep. Vote					

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Schaible House Carrier Rep. Anderson

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2047, as engrossed: Your conference committee (Sens. Schaible, Cook, Kreun and Reps. D. Anderson, Damschen, Devlin) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 981 and place SB 2047 on the Seventh order.

Engrossed SB 2047 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

SB 2047

SB 2047
1-5-2017
attch #1

Testimony of Derrick Braaten
in Support of
SENATE BILL NO. 2047

Senate Energy and Natural Resources Committee

Chairman Unruh, members of the Senate Energy and Natural Resources Committee, my name is Derrick Braaten and this testimony is offered on my own behalf. I am an attorney with Baumstark Braaten Law Partners in Bismarck, North Dakota, whose legal practice is focused on serving family farmers and ranchers, and other landowners, and who has represented numerous landowners in eminent domain proceedings.

I would like to share a few stories from cases I have worked on. In numerous cases, landowners who are faced with eminent domain proceedings have told me that they were never able to engage in any meaningful negotiations with the condemning entity. They were essentially given an offer, and told that they could either accept it, or the entity would use eminent domain to take the land. It should also be noted that it is often landmen who are contractors for the condemning entity that make these statements, which allows the entity to honestly claim it would never do such a thing. This is especially problematic when an entity has the right to use "quick take" condemnation proceedings, because in my opinion it is simply too easy for them to do so. Senate Bill 2047 is a step in the right direction, although I think much more needs to be done.

While I understand that there may be instances when we want certain entities to be able to condemn property quickly for crucial public projects, this is not how the quick take authority is being used in my experience. It should only be used in emergency situations, for crucial public projects that have a sensitive timeline. This is rarely the case. And the ability to use quick take creates incentives for abuse.

For example, I recently saw an easement that had a provision limiting the liability of the landowner to certain acts, and then indicated that if the landowner wanted to further limit his liability, he could go get an insurance policy with "liability limits not less than One Million Dollars (\$1,000,000.00)" and the entity would limit any claims it made against the landowner to that insurance limit. Although the easement simply stated this as an option (and one the entity apparently thought was generous), it's confusing to me as an attorney to see this in an easement, and it would be to many landowners. The idea that the landowner should even have to consider insuring himself for liability arising from a project for which he is under the threat of eminent domain is ludicrous. But I have seen many easements from condemning authorities, and most of them are documents I would never recommend any of my clients signing without significant changes. If a public entity is threatening eminent domain, it should not be able to use the leverage it gains from that power to extract unfair terms from the landowner in an easement. That is precisely what is happening, though, and there is often little to no negotiation unless the landowner is willing to go to court.

More relevant here is a story I will share about David Drovdal, who gave me his permission to share details about this case and the events that led up to it. Mr. Drovdal is the former Speaker of the House, and served as a Representative for District 39 for over two decades. He called me last summer after he'd arrived home from a trip to town and found a crew with heavy equipment digging up his field. He had no idea why they were there, and he immediately walked up to them and demanded to know who they were, and what they thought they were doing in his field. They simply said they had a court order and had the right to be there. Mr. Drovdal called the sheriff, who told Mr. Drovdal that he'd been shown a document that said they had the

right to be there. Mr. Drovdal then asked one of the men in his field to see the document, and was shown an iPad with a document on it.

It was not a court order. It was simply a notice from the clerk of court that Mr. Drovdal had never received. Unfortunately, this notice from the clerk is essentially all that is sent to the landowner to notify him that the condemning authority has the right to possession of his land. In this case, however, I do not believe the authority had that right, because it never notified Mr. Drovdal that it was going to take his land. He never received any written offer for an easement, there was no negotiation, and the first he heard of anything was when they were in his field with the heavy equipment. The condemning authority had sent its offer to a PO Box that Mr. Drovdal may or may not have used at some point in the early 90s. It had found this address by searching a website (www.ndpropertytax.com) that includes a disclaimer on the front page stating that the website's "content cannot be guaranteed and should not be relied upon for legal purposes." It even requires the user to click a button stating "I agree" to an additional disclaimer stating that the information on the website may not be accurate. And so with this minimal effort, the authority sent a letter to an old PO box, deposited less than \$2,000 with the court, and went out and started digging up Mr. Drovdal's land. The notice from the clerk did not reach him either, since the clerk of court sent the notice to the address given by the authority. What is most unacceptable is that it is not hard to find David Drovdal. The authority apparently had trouble getting him a simple letter, but it had no problem finding his property with the heavy equipment when it wanted to start construction.

This case is still going through the legal system, but unless and until we appeal to the Supreme Court of North Dakota, it appears that even the court system has no problem with this

behavior. So it is up to the Legislative Assembly to do something about it. Senate Bill 2047 is a step in the right direction, and I therefore urge a DO PASS.

Thank you,

Derrick Braaten

From Derrick

Fr. Derrick Braaten

SB 2047

1-5-2017

Attch # 2

A BILL for an Act to amend and reenact subsection 2 of section 61-40-05 of the North Dakota Century Code, relating to the authority of the board of directors of the western area water supply authority to exercise the power of quick take eminent domain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-40-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Exercise the power of eminent domain ~~in the manner provided by title 32 or as described in this chapter~~ as follows:

a. Except as permitted under subdivision b, the authority shall comply with title 32 for the purpose of acquiring and securing by eminent domain any right, title, interest, estate, or easement necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of an entire part of any pipeline, reservoir, connection, valve, pumping installation, or other facility for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority

b. (1) However, If the interest sought to be acquired is a right of way for any project authorized in this chapter, the authority, after making a written offer to purchase the right of way and depositing may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the authority attempts to purchase the right of way by:

1 (4) Within thirty days after notice has been given in writing to the landowner by the
2 clerk of the district court that a deposit has been made for the taking of a right of
3 way as authorized in this subsection, the owner of the property taken may appeal
4 to the district court by serving a notice of appeal upon the acquiring agency, and
5 the matter must be tried at the next regular or special term of court with a jury
6 unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

From: Unruh, Jessica K.
Sent: Thursday, January 05, 2017 8:59 AM
To: NDLA, Intern 04 - Wagner, Morgan
Subject: Fwd: SB 2047 - support by Cass County Water Resource Districts

Sent from my iPad

Begin forwarded message:

From: "Lewis, Carol" <LewisC@casscountynd.gov>
Date: January 5, 2017 at 8:53:15 AM CST
To: "Unruh, Jessica" <jkunruh@nd.gov>, "Kreun, Curt" <ckreun@nd.gov>, "Armstrong, Kelly" <karmstrong@nd.gov>, "Cook, Dwight" <dcook@nd.gov>, "Oban, Erin" <eoban@nd.gov>, "Jroers@nd.gov" <jroers@nd.gov>, "Schaible, Donald" <dgschaible@nd.gov>
Subject: SB 2047 - support by Cass County Water Resource Districts

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

The following is submitted on behalf of:

***Southeast Cass Water Resource District
Maple River Water Resource District
North Cass Water Resource District
Rush River Water Resource District
Cass County Joint Water Resource District***

The Cass County Water Resource Districts (WRDs) support SB 2047 and the common sense protections the bill provides for property owners.

Quick-take is critical to water infrastructure development in the state. Water managers are landowners themselves and do not take their eminent domain authority lightly; in fact, WRDs use eminent domain sparingly and only as a last resort to construct important water projects. WRDs have a legal, statutory obligation to negotiate with landowners, and will do so for months in an effort to avoid eminent domain. If Water Resource Districts determine to proceed with quick-take, they continue to negotiate upon filing a deposit in the amount of the final offer with the court in hopes of resolving the matter.

The WRDs prefer to pay property owners a fair price so that much needed and supported projects can move forward in a timely manner, while staying within budget. WRDs have not abused their quick-take authority since the legislature granted it in 1989 (and strengthened it in 2009). Without this important tool, WRDs will face even more difficulty building important water projects. In fact, without quick-take, a single hold-out landowner could kill a water project or could, at the very least, cause

substantial delays, adding significant costs to the project, and denying other landowners the benefit of a project they voted to construct.

We constantly hear that state and local governments must do more to combat flooding and reduce flood damages. We, along with the North Dakota Water Resource Districts Association and North Dakota Water Users Association, support SB 2047 in order to continue moving important water infrastructure projects forward.

Please support SB 2047.

Thank you.

Carol Harbeke Lewis
Secretary-Treasurer
Cass County Water Resource Districts
1201 Main Avenue West
West Fargo, ND 58078-1301
Phone: 701-298-2381
Fax: 701-298-2397
Lewisc@casscountynd.gov



TESTIMONY ON SENATE BILL NO. 2047

Senate Energy and Natural Resources Committee

**John Paczkowski, Assistant State Engineer
Office of the State Engineer/State Water Commission**

January 5, 2017

Madam Chairman and members of the Energy and Natural Resources Committee, my name is John Paczkowski. I am the Assistant State Engineer for the Office of the State Engineer/State Water Commission. I am here on behalf of State Engineer Garland Erbele, to present our neutral testimony regarding Senate Bill No. 2047, which would amend N.D.C.C. §§ 61-16.1-09(2).

The amendment to N.D.C.C. § 61-16.1-09(2) intends to define the process a Water Resource District must follow when securing a right-of-way via the quick take eminent domain process. The State Engineer has no comments or concerns on this process but rather seeks clarification regarding the phrase "...for which federal or state funds have been appropriated..."

Is the authority to utilize quick take granted only if the legislature appropriates funds for a specific project or does it also extend to a district that receives funding from the State Water Commission without a specific legislative appropriation?

Again, we have no concerns with Senate Bill No. 2047 other than the desire to clarify the issue of when state funding enables quick take authority.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

NDLA, Intern 04 - Wagner, Morgan

Bob Banderet

SB 2047
1-5-2017
attach #5

From: Unruh, Jessica K.
Sent: Thursday, January 05, 2017 8:34 AM
To: NDLA, Intern 04 - Wagner, Morgan
Subject: Fwd: Senate Bill 2047

Sent from my iPad

Begin forwarded message:

From: Bob & Laurie Banderet <bobnlori@drtel.net>
Date: January 4, 2017 at 6:59:53 PM CST
To: <jkunruh@nd.gov>, <dcook@nd.gov>, <eoban@nd.gov>, <karmstrong@nd.gov>, <dgschaible@nd.gov>, <ckreun@nd.gov>, <jroers@nd.gov>
Subject: Senate Bill 2047

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Chairperson Senator Jessica Unruh and Senators Curt Kreun, Kelly Armstrong, Dwight Cook, Erin Oban, Jim Roers, and Donald Schaible;

RE: Senate Bill 2047

My intention was to make the trip to Bismarck to testify at your Senate committee hearing for Senate Bill 2047 on Thursday but weather won't permit it. I am hopeful you will still consider my input in your deliberations on the bill.

I followed closely the debate and amendments regarding quick take by water resource boards in the last legislative session as well as the discussions by the interim committee appointed to find a solution after the governor's veto. I am very disappointed that Senate Bill 2047 does not address the clarification sought by the State Engineer in the last legislative session regarding if cost share to water boards constitutes a State appropriation of funds. Without this clarification local water boards will use quick take on all projects whether large or small. I am from southeast ND and the local board used quick take on a large project last year in the Oakes area and will most certainly use it again in a proposed project in Sargent County this spring. I am not opposed to quick take in an emergency situation but most of these projects are not emergencies but only projects that benefit just a few landowners.

Eminent Domain is an unwelcomed but necessary tool used against landowners for these types of projects by an unelected and unaccountable water board. Judging from testimony given by water board members to the Water Topics Interim committee, <http://www.legis.nd.gov/assembly/64-2015/interim/17-5122-03000-meeting-minutes.pdf>, quick take is simply leverage or a hammer to be used in eminent domain negotiations. Is that what the Legislature intended when giving quick take to water boards? Water boards often state they need quick take to stop one or two landowners from halting a project by demanding exorbitant prices for their easements. In my experience it is seldom price that is the issue, rather other construction or easement related issues or even the need for the



project itself. (In my own personal case, the water board is proposing an \$8-10 million project without a landowner vote or input!) Giving a water board quick take does not allow a landowner time to work out and resolve these issues. Senate Bill 2047 only gives a landowner an extra 45 days to resolve these issues. While somewhat helpful, it does not do much to protect private property rights.

In my opinion, Senate Bill 2047 doesn't go far enough in limiting water board use of quick take. Some vetting mechanism needs to be added so water boards don't have carte blanche quick take on every project.

Thank you for your time and consideration.

Bob Banderet
9942 118th Ave. SE
Cogswell, ND 58017

From: Unruh, Jessica K.
Sent: Thursday, January 05, 2017 8:36 AM
To: NDLA, Intern 04 - Wagner, Morgan
Subject: Fwd: Senate Bill 2047

From Paul Mathews
Cooks well, ND

Sent from my iPad

Begin forwarded message:

From: Paul Mathews <farmerpost@hotmail.com>
Date: January 4, 2017 at 3:05:47 PM CST
To: "jkunruh@nd.gov" <jkunruh@nd.gov>, "ckreun@nd.gov" <ckreun@nd.gov>, "karmstrong@nd.gov" <karmstrong@nd.gov>, "dcook@nd.gov" <dcook@nd.gov>, "eoban@nd.gov" <eoban@nd.gov>, "jroers@nd.gov" <jroers@nd.gov>, "dgschaible@nd.gov" <dgschaible@nd.gov>
Subject: Senate Bill 2047

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Chairman Senator Jessica Unruh and

Senators Curt Kreun, Kelly Armstrong, Dwight Cook, Erin Oban, Jim Roers and Donald Schaible:

RE: 2017 Senate Bill 2047

As a southeast ND landowner and soon, a possibly affected landowner, I encourage you to consider the proposed bill that secures a better environment for property rights.

Sensing I will be unable to attend Thursday January 5th Committee meeting since weather has impacted the required travel; I hope today to convey to you my interest into this legislation.

I have tracked the development of this bill through the Interim's Water Topics Committee starting in March 2016. I was alerted to that Committee's assignment to study "quick take" when I received a phone call from Rep. Curt Hofstad. He inquired if my prior experience with eminent domain's condemnation would have similarities to the Legislature's interim study topic. Within a short conversation, Rep. Hofstad asked if I could attend March's meeting as he indicated my beliefs would be beneficial to the deliberations this Interim Committee was contemplating. I was in attendance on March 8th, but agenda time expired before Chairman Schmidt was able to allow any more participation. Rep Hofstad at the meeting's conclusion presented my written testimony as minutes describe as appendix DD – link here (http://www.legis.nd.gov/files/committees/64-2014%20appendices/17_5096_03000appendixdd.pdf)

Perhaps Senators Unruh and Schaible have already consumed my input, but I refer to it here again.

Based on that testimony, I would now characterize my disappointment the Interim Committee failed to acknowledge the core dispute leaving the 2015 legislature's session and Governor's veto to address the current language (state funds have been appropriated). It would appear to me the lack of legislature defining those 5 words will leave property rights in continued peril.

I would hope this Committee, as it reflects on SB 2047, would consider that missing component of legislative clarification. Left unchanged, I sense Water Board attorneys will fill the vacuum of their own interpretation. I believe history has indicated those interpretations are not "landowner rights" friendly. The current situation leaves the area ripe for abuse. Here in southeast ND, water boards have shown a history to use quick take already with an expanded and perhaps undeserved interpretation of the 2009 legislative intent.

I would encourage this Committee to amend this bill's page 1 lines 17-18 "or state funds have been appropriated" to read "approved by the Legislative Assembly for a specific project". This insures the century old protection to landowners is restated. This would require water resource district's to a precondition of state fund appropriation before to authorizing their "quick take" on top of condemnation still enforceable. At least then, meaningful public testimony could possible surface whereas the Interim Committee's was mostly tainted with one side's view. In Curt's last email to me after being excluded in March's Interim meeting; included:

"The real fight will be in the next legislative session and there is the place to mount a concerted effort to protect landowners from government's overreach. Curt"

Please remind yourself, water board members are not currently an elected group. Leaving "quick take" with devastating landowner right consequences in that form can create abuse because of.

I stand ready and would welcome questions from you for what I believe is a very important landowner right concept.

Thank you for your time and efforts for this subject.

Paul Mathews
Cogswell, ND

*presented at CommWork
1-6-17*

*SB 2047
1-6-17
Attach #1*

17.0224.03001
Title.

Prepared by the Legislative Council staff for
Senator Unruh

January 5, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2047

Page 1, line 23, after "compensation" insert ", which includes a specific description of the exact location of the right of way."

Page 2, line 18, after "way" insert ", but not a blanket easement."

Renumber accordingly

NORTH DAKOTA
HOUSE OF REPRESENTATIVES 65TH SESSION
ENERGY & NATURAL RESOURCES COMMITTEE
HONORABLE TODD PORTER, CHAIRMAN

SENATE BILL 2047

MR. CHAIRMAN AND MEMBERS OF THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE:

MY NAME IS GREG LARSON, I AM CHAIRMAN OF THE BURLEIGH COUNTY WATER RESOURCE DISTRICT.

WE ARE HERE TO SUPPORT SB 2047 AS IT HAS BEEN PRESENTED TO YOU. WE ASK THAT YOU PASS IT OUT OF YOUR COMMITTEE WITH A DO PASS. THE BILL ADDRESSES THE ABILITY OF WATER RESOURCE DISTRICTS TO ENTER INTO A QUICK TAKE PROCEDURE, AND RESTRICTS THE USE OF THIS OVER WHAT IS CURRENTLY IN THE CENTURY CODE.

WE SUPPORT THE BILL CURRENTLY BEFORE YOU. QUICK TAKE IS A TOOL THAT SHOULD BE USED CAREFULLY AND AS A LAST RESORT, BUT IT IS A VALUABLE TOOL. THE BURLEIGH COUNTY WATER RESOURCE DISTRICT HAS USED IT ONCE THAT I'M AWARE OF. DURING OUR CURRENT FLOOD PROTECTION PROJECT FOR SOUTH BISMARCK, ONE HOME OWNER DIDN'T WANT TO GRANT AN EASMENT WITHOUT RECEIVING WHAT THEY THINK IS JUST COMPENSATION.

WE TRIED TO NEGOTIATE WITH THEM FOR SEVERAL MONTHS, INCLUDING HAVING THEIR PROPERTY APPRAISED AND MAKING AN OFFER HIGHER THAN WHAT THE APPRAISAL HAD DETERMINED THE VALUE OF THE FLOOD LEVY IMPACT TO THE PROPERTY WAS. WHEN WE COULDN'T REACH AGREEMENT, THE DISTRICT BEGAN TO DESIGN FLOOD PROTECTION AROUND THEIR PROPERTY, SINCE WE COULDN'T DO ANYTHING WITHOUT AN EASMENT. AT THAT POINT THE LANDOWNERS SAID THAT THEY WANTED THE FLOOD PROTECTION, BUT WANTED THE COURTS TO DETERMINE THE VALUE OF THE EASEMENT. KEEP IN MIND THIS WAS NOT A TAKING OF THEIR LAND BUT ONLY AN EASMENT TO PROVIDE THE PROTECTION THEY WANTED.

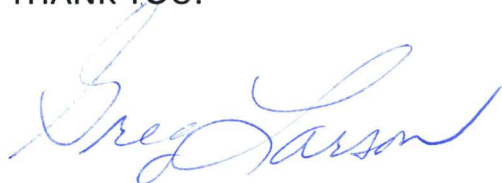
WE THEN WITH THEIR KNOWLEDGE AND AGREEMENT, BEGAN A QUICK TAKE PROCEDURE IN SUMMER OF 2016. THE PROJECT IS MOVING FORWARD SO WE CAN PROTECT OVER 400 HOMES, THE MISSOURI RIVER CORRECTIONAL CENTER AND OTHER MUNICIPAL INTERESTS. THAT PROTECTION SHOULD BE COMPLETE IN SUMMER OF 2017.

IT APPEARS LIKELY THAT WE WILL NOT GET A COURT DATE UNTIL SOMETIME LATE IN 2017. HAD WE NOT HAD QUICK TAKE AS AN OPTION, THIS PROJECT WOULD NOT BE ABLE TO START UNTIL 2018 AND, IN ALL LIKELYHOOD, A COMPLETION DATE MIGHT BE AS FAR OUT AS 2019. THAT WOULD ADD EVEN MORE EXPENSE AND TIME WITHOUT PROTECTION FOR ALL THOSE WHO VOTED TO BE ASSESSED FOR THAT PROTECTION. THE LANDOWNERS WHO WANT THE PROTECTION HAVE BEEN VERY PATIENT WITH THIS PROCESS.

WE AGREE THAT THE LAND OWNER IN QUESTION HAS THE RIGHT TO ASK FOR THE COURTS TO DECIDE WHAT THEIR EASMENT IS WORTH. WE ALSO NEED TO STIPULATE THAT THIS LANDOWNER ALONG WITH THE MISSOURI RIVER CORRECTIONAL CENTER WILL BE THE ONES WITH A LEVY ON THEIR PROPERTY. HOWEVER, WITHOUT THE ABILITY TO HAVE QUICKTAKE AS A TOOL, THE ENTIRE EFFORT TO PROTECT THIS AREA WOULD STILL BE WAITING FOR AN OPPORTUNITY TO MOVE FORWARD.

FOR THESE REASONS, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE BURLEIGH COUNTY WATER RESOURCE DISTRICT ASKS THAT YOU PASS SB 2047 AS WRITTEN.

THANK YOU.



GREG LARSON

BURLEIGH COUNTY WATER RESOURCE DISTRICT

2
3-2-17
HB 2047
ZENTGRAF

Testimony Before The House Energy & Natural Resources Committee
Thursday, March 2, 2017
SB 2047
Monica Zentgraf
Secretary-Treasurer – Richland County Water Resource District

On behalf of the Richland County Water Resource Board [RCWRB], I am asking you to support SB 2047 in its present form. This Water Resource District [WRD] has only used quick-take eminent domain one time in the past 20 years. That case involved a father and four siblings who owned land, of which the District needed to purchase 0.87 acres for reconstruction of the legal drain. The father and three siblings readily agreed to sell; however, one of the siblings would not agree. The Mangers worked diligently to resolve the issues with the last sibling, but was unsuccessful. Within a matter of days of being notified that the District would be moving forward with quick-take proceedings, the final sibling agreed to settle.

It is crucial that quick-take is available to the District. As you can see, without quick-take, a single holdout landowner (involving even such minimal amount of land as 0.87 acres) could delay or kill a project other landowners desperately need or it could cause a WRD to lose considerable funding from other sources for things such as disaster related repairs. Traditional eminent domain is problematic because it often requires two years to complete. During this time, project costs increase and delays cause multiple other problems for the project as well.

The Members of the RCWRB never want to use quick-take, nor regular eminent domain, for that matter. They do all they can to settle with landowners to avoid eminent domain. Keep in mind that Board Members are generally farmers and/or landowners, as well as neighbors, and are very aware of the sensitive nature of land acquisition and eminent domain proceedings. Amendments have been added to the bill which should alleviate any concerns you may have relative to safeguards for landowners.

Your Committee added an amendment to HB 1244 which grants WRDs the right to use quick-take only when direct Federal or State appropriations are involved. WRDs do not receive direct appropriations and such language virtually takes all quick-take authority away from WRDs. We ask that SB 2047 not be amended in the same way as HB 1244.

On behalf of the RCWRB, I respectfully request your Committee give SB 2047, in its current form, a "Do Pass". Thank you for your time and your consideration.

TESTIMONY ON ENGROSSED SENATE BILL NO. 2047

House Energy and Natural Resources Committee

**John Paczkowski, Assistant State Engineer
Office of the State Engineer/State Water Commission**

March 2, 2017

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is John Paczkowski. I am the Assistant State Engineer for the Office of the State Engineer/State Water Commission. I am here on behalf of State Engineer Garland Erbele to present our testimony regarding Engrossed Senate Bill No. 2047, which would amend N.D.C.C. § 61-16.1-09(2).

The amendment to N.D.C.C. § 61-16.1-09(2) intends to define the process a Water Resource District must follow when securing a right-of-way via the quick take eminent domain process. The State Engineer has no comments or concerns on this process but rather seeks clarification regarding the phrase "...for which federal or state funds have been appropriated..." found on Page 1, Lines 17 and 18.

Is the authority to utilize quick take granted only if the legislature appropriates funds for a specific project or does it also extend to a district that receives funding from the State Water Commission without a specific legislative appropriation?

The answer to this question is important because property rights are required before the Office of the State Engineer can process Construction Permit Applications, which are required prior to building water control projects that affect the property of others. Examples of projects that require construction permits and have the potential to affect adjacent properties are flood control dams, levees, and flood walls like those being proposed as protection measures in a number of the state's larger cities.

Again, we have no concerns with Engrossed Senate Bill No. 2047 other than the desire to clarify the issue of when state funding enables quick take authority.

Thank you for the opportunity to comment on this matter. I will be happy to answer any questions you might have.

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HARTL

From: Ronny Hartl [<mailto:hartlhollow@hotmail.com>]

Sent: Wednesday, March 1, 2017 5:32 PM

To: -Adm-Legislative Council <lcouncil@nd.gov>; Scott Olerud <scottolerud@gmail.com>; Tim Huether <timhue@drtel.net>

Subject: Water Board Related Bill SB 2047

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

On behalf of the Ransom County Water Board, I request you support SB 2047 and oppose HB 1244. Our request is based on the need to preserve the ability to use the so called "quick-take" process in acquiring needed right-of-way leading up to the implementation of approved drainage projects. The same burden of proof is required as to the necessity of property acquired under quick-take as in the ordinary condemnation process and fair-market value is still the minimum compensation required by law. However the added time and administrative costs that would be imposed by the loss of quick-take is an unnecessary burden on needed projects that nearly always are constricted for both time and budget. Additionally, it should be left to the discretion of each group of County Commissioners as to how much step-by-step action the County Commissioners wish to have in the acquisition of Water Board projects. The RCWB serves at the discretion of the Ransom County Commissioners and a Commissioner attends nearly all of our meetings.

Thank-you for your consideration of our input. I regret we were not able to get our comments to the Legislative Committee earlier.

Ronny Hartl
Enderlin, North Dakota
Ransom County Water Board Member

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Ellingson

**North Dakota Stockmen's Association
Testimony on SB 2047
March 2, 2017**

Good morning, Chairman Porter and House Energy and Natural Resources Committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association (NDSA), an 87-year-old cattle industry trade organization.

The Stockmen's Association has a hard-line policy supporting private property rights and opposing threats to those rights, such as eminent domain and quick-take authority. Our organization believes that eminent domain and quick take should be used only in absolutely necessary situations, when no other options exist.

The Stockmen's Association recognizes the merits of SB 2047 as a step in the right direction for property owners. It will help improve communication between the parties, establish a more structured, formalized process and incorporate elected officials – the county commissioners – when necessary, which are all positive for landowners.

This bill also prohibits blanket easements (specific parcels must be defined) and removes no-longer-applicable easements that otherwise muddy landowners' title and have no further purpose. These features are not included in HB 1244 and that makes this bill the preferable option of the two.

SB 2047 pertains only to water resource district boards' quick-take authority. Your committee might also consider adding these features to statute pertaining to other entities with quick-take authority, or studying that issue through the interim if there are additional considerations that need to be investigated.

Thank you for the opportunity to comment.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2047

Page 1, line 16, after "is" insert "an easement for"

Page 1, line 18, overstrike "appropriated" and insert immediately thereafter "made available"

Page 1, line 21, after the second "the" insert "easement for the"

Page 1, line 22, replace "Sending" with "Conducting informal negotiations for not less than sixty days."

(b) If informal negotiations fail, the district shall engage in formal negotiations by:

[1] Sending"

Page 2, line 3, replace "(b)" with "[2]"

Page 2, line 8, replace "(c)" with "[3]"

Page 2, line 10, remove "in thirty days"

Page 2, line 17, after "(3)" insert "A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way."

Page 2, line 17, after "If" insert "formal"

Page 2, line 21, replace "sufficient" with "thirty days"

Page 2, line 22, after the underscored period insert "After receiving verification from the district that there has been no reference or threat of quick take eminent domain by the district during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain."

Renumber accordingly

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which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant and shall be signed by the chairman of the water resource board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds.

The treasurer of each county in which a district, or a part of a district, is situated shall collect all district taxes and special assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. In June and December of each year, and as the county commission may otherwise require, the district treasurer shall report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

61-16.1-09. Powers of water resource board.

Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal or state funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. 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 subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, 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.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or

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- agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
 5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.
 6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
 7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
 8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
 9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
 10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
 11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.
 12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
 13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
 14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
 15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
 16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
 17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of

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12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within and without the limits of the district, after obtaining the approval of the board of county commissioners of the county in which the property is located, for all purposes authorized by law or necessary to the exercise of other stated power.

61-16.1-009

QUICK TAKE EMINENT DOMAIN PROCESS UNDER 2017 ENGROSSED SENATE BILL NO. 2047, WITH HOUSE AMENDMENTS

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Approximate Day Action Occurs	Action Steps
	The water resource district identifies a right of way necessary for a project authorized under North Dakota Century Code Chapter 61-16.1 and for which federal or state funds have been made available.
Day 1 - 60	The water resource district negotiates informally with the landowner for at least 60 days.
Day 60	If negotiations fail, the district sends the landowner an appraisal and written offer to purchase the right of way. The district must use certified mail or commercial mail requiring a signed receipt, and the district must receive the signed receipt or documentation of constructive notice.
Day 75 (plus mailing time)	If there is no agreement between the district and landowner (or no response from the landowner) within 15 days after the written offer is received by the landowner, the district sends the landowner a written request for a meeting. The district must use one of the same methods of mailing as before and must obtain the signed receipt or constructive notice of receipt.
Day 105 (plus mailing time)	If there is no agreement between the district and landowner (or no response from the landowner) within 30 days after the offer of a meeting is received by the landowner, the district sends the landowner written notice of its intent to take possession of the right of way. The district must use one of the same methods of mailing as before and must obtain the signed receipt or constructive notice of receipt.
After day 105 (plus mailing time)	The district asks the board of county commissioners for approval to take possession of the right of way by quick take eminent domain.
After the preceding step	The county commissioners provide the landowner 30 days' notice of a public meeting regarding the right of way.
At least 30 days after the preceding step	The county commissioners hold a public meeting on the right of way and vote on whether to approve the use of quick take eminent domain to take the right of way.
After the preceding step	If the county commissioners voted to approve the taking, the district takes immediate possession of the right of way as soon as it files an affidavit by the chairman which states the district has fulfilled the required negotiation steps and deposits the amount of the district's earlier written offer for the right of way with the clerk of the district court of the county in which the right of way is located.
After the preceding step	The clerk of court provides written notice to the landowner of the filing and deposit by the district.
Within 30 days after the preceding step	The landowner may appeal the taking to the district court.
When the district no longer needs the right of way for the purpose for which it was acquired	The district's ownership of the right of way terminates if it has not terminated by other means already.