

2019 SENATE AGRICULTURE

SB 2238

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
1/31/2019
31902

- Subcommittee
 Conference Committee

Committee Clerk Signature Dan Johnston II

Explanation or reason for introduction of bill/resolution:

Relating to limitations on eminent domain authority.

Minutes:

7 attachments

Chairman Luick: Presented SB 2238. Brief explanation of what the bill intends to accomplish.

Senator Hogan: Would a city have to request permission from the county in order to use emanate domain?

Chairman Luick: No.

Dustin Gawrylow: See attachment #1 for testimony in support of SB 2238.

Pete Hanebutt, FB: We do support this bill.

Opposition

Josh Wolsky, Alderman, City of Minot: See attachment #2 for testimony in opposition of SB 2238.

Senator Larsen: Excuse me, but I'm going to ask a hypothetical question. During the 2011 flood cycle, we had an entity come in and give a scenario of how to fix the flooding problems of Minot and Fargo. The results he that he gave, if we went route that we are going, would be these huge flood walls and dikes. If this would have been law, do think that would have hindered the production that is happening now? Because we are rolling forward and spending lots of money along the Souris river basin. If this becomes law, do you think it would slow the process?

Wolsky: I am not sure that I agree, no. The position of the city of Minot, is that in our jurisdiction, we should be the final authority in cases of eminent domain.

Senator Klein: What we are doing here is providing for that political subdivision to make the decision that affect them. I think what this bill does, is the elected county officials have some say on what happens within their county.

Wolsky: I do not disagree. The testimony I provided to this committee was largely based on an interpretation that the cities authority would be preempted or have to go through the county's authority. And so that is the main reason I was asked to provide this testimony.

Steph: See attachment #3 for testimony in opposition of SB 2238.

Tim Freije, North Dakota State Water Commission: See attachment #4 for testimony in opposition of SB 2238.

Senator Hogan: As the State Water Commission, many of your projects are cross-jurisdictional; do you see this as an administrative challenge? How do you see this actually working on your projects?

Tim Freije: I see it as a potential roadblock. Without that quick-take authority, the State is very much exposed to potential cost increases. And we already work with the county whenever we can, we like to have a meeting with them before our projects and get a letter signoff from them.

Chairman Luick: Do you use the quick-take at all?

Tim Freije: Primarily.

Chairman Luick: How many times since 2015 have you had reason to use that?

Tim Freije: I do not have that figure.

Jack Dwyer, NDWUA, and NDWRDA: See attachment #5 for testimony in opposition of SB 2238.

Chairman Luick: So you are thinking that you would just be able to go in and claim eminent domain without any county authority having anything to say about what happens in their county?

Jack Dwyer: Yes I do. It would be problematic if we had a problem getting a certain county commission to ratify aa eminent domain that was necessary for a project.

Chairman Luick: Would that not be something you do up front anyway?

Jack Dwyer: Along with what Mr. Freije said, we have not used eminent domain regularly, it has been very rare that we have used it. We are usually able to reach amicable agreements with landowners; we treat landowners with the utmost respect. To answer your question, it would be better to approach county commissions beforehand generally; but it would be problematic to go before them for every single case.

Senator Klein: You see it as problematic, but thus far, you have been playing by the rules, you have been working with the counties. It has not yet been a problem; you are looking at this in the future, thinking that you never want to have your hands tied. However, there is no problem with the cooperation between the cities and the county's right now, is there?

Jack Dwyer: We have not had issues, we have not had to approach the county to request eminent domain in past though. So, we have not had an issue requesting approval.

Senator Larsen: That begs the question on that idea that was spurred in Minot went I was a part of the conversation of when this flood happened. We had an individual who was from Jackson Hole, Wyoming, that did projects in Nashville, TN, South Dakota, Sioux City, IA, he did major flood projects overseas as well. His response was that you could not make land overseas. So he was building these flood walls and all sorts of new ways of handling flood protection, at a fraction of the cost! So, if those little counties had the ability to hold their own, we could have much more effective flood protection, at a much smaller cost to the taxpayer, as well as the landowners.

Jack Dwyer: I do not recall the individual from Wyoming, so I do not know if I can answer your question.

Todd Kranda, NDPC: See attachment #6 for testimony in opposition of SB 2238.

Chairman Luick: I would have to say that I disagree with the opinion that it will cause more trouble than it seeks to fix, and that we do not have that conflict today, because we do. We write law here, as I perceive it, for the very few that destroy or disobey the law. So, your company might be doing an astounding job of getting out there and exploiting the impacts of that particular project is that you are representing. But there are places and cases where that does not happen. So, rather than what you were referring to earlier about it causing more harm than good, I look at it the other way. I believe that having more people informed is going to cause less consternation and less of a problem moving forward with your projects.

Todd Kranda: The goal would be to have more information sharing, but the final decision of approval or denial, that is a serious concern. If your bill was rewritten to include something about information sessions or something in advance to be provided. But having a second level of judicial review by a county commission, similar to what a judge does in the eminent domain process, creates some problems.

Gaydos, NDDOT: See attachment #7 for testimony in opposition of SB 2238.

Chairman Luick: Closes hearing on SB 2238

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
2/1/2019
Job # 31942 (28:14 – End)

- Subcommittee
 Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to powers of the board of county commissioners; and to amend and reenact section 32-15-01 of the North Dakota Century Code, relating to limitations on eminent domain authority.

Minutes:

No Attachments

Chairman Luick: Opened SB 2238 for committee discussion.

Senator Klein: On another of your bills, SB 2238, we had the discussion on eminent domain and I think I understand your concerns. I am not sure I understand any of these folk's concerns because I was reluctant to believe that this is going to be some major concern. They are looking to the future just in case. I heard from Jack that we don't have any trouble now and that they work together. Are they concerned that down the road they won't want to work together and they can drive the truck down where they don't have to ask the other county? I see the hypothetical concerns with the Fargo issue. Wouldn't we need to reach out to the next county anyway? And, Mr. Dwyer's comments about concerns, well, we have concerns when he is talking about sub-surface water management. He wants to make sure everyone downstream knows. I don't know which way to go on that one. It was not very easy for me to figure out how to fix this.

Chairman Luick: After committee, Mr. Dwyer caught me upstairs and he had not talked with my county water board. He represents the county boards as a lobbyist. He had only been talked to by the Cass County water board. I asked him to talk to my water board. I don't want them fighting against the upstream coalition group, or going back and forth. I can see the benefit of this. Not only for my situation, but to me, it comes back to having the decency of going out ahead of time and making sure that this is not going to be a big burden on your county. It can be a timbering event, but if all of you know what is going on ahead of time and your county board say to wait because of all of the people it will effect as well as the county revenue, etc.

Senator Larsen: (Inaudible.)

Senator Hogan: I think the two people that really surprised me, were Todd Kranda and the North Dakota Petroleum Council and their concerns about pipelines. It sometimes does happen when they are issuing pipeline easements. I had not thought about that.

Chairman Luick: Last session we had this bill, and Senator Unruh brought up that very same thing. She was really afraid that it was going to be effecting their types of things.

Senator Hogan: That is the potential for unintended consequences.

Chairman Luick: That is one of the reasons that I went to her to see if she has any heartburn about actually being a sponsor. I will still get more information on this bill as well.

Senator Osland: In this whole respect, I had one little experience in this area. It was pretty minor. When I was county commissioner, they were building a power line from the west to the east, and these people that were involved with the power line came and visited with me probably 3 years before they built it. They showed us a map where they might go. It was like a cup of coffee at a meeting, and they said they would get back to me. As it turned out, the line came but it didn't go through our county. Going from the practical sense, these water issues cover more than one county, so if engineers were going to take property they would visit with the county commissioners and they would have an opportunity to say no – that is what we are talking about, right?

Senator Larsen: In our situation, we had an engineering firm from Jackson Hole, WY come in to just the city and discuss an issue on how we could address the flood problem that would affect the whole Souris River water basin, and he was only allowed to talk to the city people. He did not talk to all the others that would alternately be affected. Then another engineering firm that now has the contract, they just buffaloed over this guy and he did not have any other input. They are doing this big project without that. If everyone could have heard his story and have input, it would have had a whole different outlook possibly. It is unbelievable what we are doing. I feel if more input and more eyes were on the project it would have been a better buy in.

Chairman Luick: I feel that the ones that were talking against it have a suspicion that something is going to be bad in the future. It is disheartening to me. Basically you are taking away the property rights. We need to make sure that the property rights are, as best that we can, stay available to that property owner. If eminent domain for a quick take is absolutely necessary and needed, so be it, but until that point the people should have their rights to their property.

Senator Klein: The language does not say that they cannot do that. You just need to work together with the county. That there should be notification.

Chairman Luick: Correct. Going back to the hypothetical situation south of Fargo that may or may not have happened, the original county water resource board to this date has not had a meeting with the authority in charge that is not the other counties water board. It is an appointed group. They have not had the conversations yet about this project. They are assuming that everyone knows what is going on, but it has not happened. It is unfortunate. I would like to have a little more time to work on this. Closed the committee discussion on SB 2238.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
2/7/2019
32415

- Subcommittee
 Conference Committee

Committee Clerk Signature Dan Johnston II

Explanation or reason for introduction of bill/resolution:

Relating to limitations on eminent domain authority.

Minutes:

1 attachment

Chairman Luick: Opened second hearing on SB 2238.

Chairman Luick: Proceeded to distribute a proposed amendment #19.0976.01001 (see attachment #1) to SB 2238. He then went on to explain that the language in the bill did not match the intent. The proposed amendment would seek to change the language to match the intentions of the sponsor.

Senator Klein: Moved to adopt amendment #19.0976.01001

Senator Larsen: Seconded.

A Roll Call was held: 6 yeas, 0 nays, 0 absent.
Motion Carries
The amendment was adopted.

Senator Hogan: I do still intend to oppose this bill due to the testimony provided by the Petroleum Council.

Senator Osland: I have question concerning the Association of Counties, did they weigh in on this at all?

Vice Chair Myrdal: They did not.

Chairman Luick: There is no fiscal note on this, so we can hold it off until next week.

Senator Osland: I was just wondering because normally they would weigh in on something like this; they would voice an opinion.

Senator Klein: We did receive opposing testimony from Chad Peterson, Vice-Chairman of the Cass County Commission.

Chairman Luick: That was before the amendment however.

Senator Hogan: Could we perhaps ask someone from the Association of Counties to come testify?

Chairman Luick: You bet we can.

Senator Hogan: Let us do it.

Chairman Luick: Not a problem.

Senator Hogan: Okay.

Chairman Luick: Closed hearing on SB 2238.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
2/8/2019
32435

- Subcommittee
 Conference Committee

Committee Clerk Signature Dan Johnston II

Explanation or reason for introduction of bill/resolution:

Relating to limitations on eminent domain authority.

Minutes:

Chairman Luick: Opened hearing on SB 2238

Aaron Birst, Association of Counties: Quite frankly, this bill is a little bit difficult for us. We understand what you are trying to do, we agree that elected officials should have some involvement when this process happens, because it is a controversial process. The problem is, the big elephant in the room, if this is a diversion issue, our counties have some disagreements on that, and so I cannot engage in determining whether or not one county should be able to have some authority over another county. Under the bill you have proposed, one county could veto a project that maybe another county wants, if that is the issue, that becomes a problem for the association of counties and I have to back out of this presentation. However, I understand, in terms of pipeline projects and most water projects, that it make sense for elected officials to, at some point, have a say in that process. I would be happy take any questions.

Senator Hogan: I was surprised when the pipeline and the Petroleum Council all came in so strongly on this; Are you aware of any instances where those cross-jurisdictional problems have happened?

Aaron Birst: For the most part, it works out pretty well, so I have not seen it as an issue in the last 20 years, with the exception of the Fargo Diversion Project.

Senator Hogan: So the current system has worked efficiently in terms of the use of eminent domain?

Aaron Birst: I would say that the current system works for political subdivisions, I would say there are some citizen that are frustrated with eminent domain, but in terms of counties, cities, state work together, that has worked generally worked out pretty well.

Vice Chair Myrdal: I live in the northeastern part of the state, and we have a county that has frequent heavy flooding, sadly, we have to work with the Canadians on that issue, so there

are some concerns in that county over this bill. Have you heard anything from that particular part of the state?

Aaron Birst: We have had a lot of feedback from different counties on this, and again, the counties are appreciative of your effort because they think they should be involved in this process. If eminent domain is being exercised, a county should be involved on a large project, I have heard talk of even amending the bill to cut out the smaller projects, we would have no objections to that. It becomes a question of whether has a disagreement with another county, what to do with that.

Vice Chair Myrdal: So, just for my peace of mind, can you go through the ABCs of the bill and explain it does and does not do?

Aaron Birst: It requires the county authority to allow for the eminent domain use, and again, on small projects, I 100% agree with that concept. But, if it is a large project that crosses multiple counties, multiply political subdivisions than we cannot take a position because of the Diversion Project. I think the Diversion will happen, at the end of the all the parties will get together and work through it, I do not see one county vetoing another county, but under this bill, there is that potential.

Chairman Luick: How would it work out if it were state boundaries rather than county?

Aaron Birst: That is excellent question. First, I should make sure this is clear, counties in general are not thrilled with the eminent domain process and think it should be used sparingly. Ultimately, those questions between States and Nations, hopefully you would have a judge to make that call.

Chairman Luick: That is the whole thing behind this; it should go into the hands of an elected board, to make decisions of a territorial type. Even on the lower end of this scale, you end up with, if it is a situation where property is being condemned on a smaller scale, that are some property rights that are being violated, and if it is not an elected board that is overseeing this, than we are giving the authority to whoever wants to go and condemn that property. I look at this like, if it is the highway department, the DoT or a water project, and there are small acreage involved, I can see that being no problem. However, when you move in and start taking property and it is on a mass amount, so now it has a direct taxable effect upon the evaluation of property in that county, now we are looking at something more serious.

Aaron Birst: You are 100% right, these are difficult decisions that should be made by elected officials, and again, that is why we support the general concept. The problem becomes when you have a project that crosses multiple members of the Association of Counties, and if there is a disagreement on whether the project should occur. Ultimately, I would suggest that the bill has consultation with the elected officials, and I do not know how you would write that, but there should be elected officials in that process. Whether they ultimately can veto a process is, again, problematic if you have multiple counties that disagree.

Chairman Luick: Would that not ultimately end up in court anyway?

Aaron Birst: If you pass the bill as is, than ultimately, say Richland County say that they do not approve of this particular project and Cass County says that they need that project, the only solution is a judge. Therefore, if you pass the bill I foresee court action, rather you pass the bill or not really.

Chairman Luick: I look at it like, ok, so let us leave the Diversion out of the picture entirely, let move to a dry county area; should one county have the authority to take property from another county?

Aaron Birst: On the holistic approach, we feel counties should have a say in the eminent domain process, so I agree with you in that concept. But then there is also concept of two counties disagreeing, one county is suggesting that a pipeline go through and one is suggesting that it should not. If the folks that want the pipeline in that county, if the county commissioners approve of it, than you have those taxpayers who are represented by their commissioners who say we want this. You might then have commissioners who say, well we are not beholden to you, we are not elected by you and we are going to make a decision for you. Therefore, at the end of the day, it has to be some kind of a judge who makes that ruling.

Vice Chair Myrdal: So this is an extremely difficult issue because I hear from my county exactly what you are saying. They do not like eminent domain generally, and want authority over it and yet we have pipelines and the Red River in my district, so we are a mess. Is there anything we can do to this bill to make it agreeable to these counties?

Aaron Birst: If you were to make it so that they do have out right veto authority, instead giving them some sort of consultation with public hearings to maybe slow the process and give everyone a better understanding of the project, that certain seems like it would work as well. However, the bill as it is now with the total veto authority, which is weird because I am with the Association of Counties and am suggesting that you do not give the counties that much authority.

Chairman Luick: And in visiting with myself, my good side, thinking about putting a limitation on the amount of acreage; If it is over a certain amount of acreage than the county Commissioners would then be involved.

Aaron Birst: I have not run that potential through my legislative committee, but what I would suggest is that you should do that, at least to eliminate some of the opposition. Because right now it is pretty broad, the county could veto a small gathering pipeline. If you put the acreage limit in there, than at least we are addressing the main issue, it does not get us past all of the issues, but it does address the main one.

Chairman Luick: It creates more of a hardship for that county if that evaluation of that property is then depleted.

Aaron Birst: You are correct. At least it would take some of that opposition away from this bill; maybe the Petroleum Council will not have as many objects if it was cut out of the bill.

Senator Hogan: Under the current law, if there was an eminent domain claim against land in another county and it went to court, would the county where the land is in have standing to provide testimony in that court case? Would they be a party to the legal procedure?

Aaron Birst: Yes. A county that is being harmed by the action of another county would have standing to challenge that.

Senator Hogan: So they would have a voice in the decision about the eminent domain at this time?"

Aaron Birst: They would certainly have the opportunity to provide their input, whether they feel they have a voice in the process or not is...

Senator Hogan: But they have an opportunity.

Aaron Birst: Again, I always think of eminent domain like this, it is a powerful tool that must be used. I will geek out here, but as Spock said, "The needs of the few cannot prevail over the needs of the many". You certainly need to have some ability, if the vast majority of people need a project to happen, it needs to happen; you cannot have one county stop that project. That being said, it is a complete legislative determination in terms of who wields that authority, of course we have given that authority to pipelines, waterlines, and historically what we have done is given water boards the ability, because the watersheds cross multiple counties.

Senator Osland: Assuming we pass this, the project still goes forward and they still use eminent domain, just because the county Commissioners say no, that is not going to preclude this from going on. As a property owner and for some reason the negotiations go down, we go to court; Can the county commission bar what the property owner does with their property? Most eminent domain cases do not go to court, so if they come and want to acquire this piece of property and I say yeah okey dokey, we are good. Can the county bar that?

Aaron Birst: Under the current bill, that seems to be the reading. Because ultimately, the county would have to approve the project.

Senator Osland: So then, eminent domain goes onto the property and county says no, then we go to court; no matter what this bill does, it will probably prevail anyway.

Aaron Birst: That is the ultimate question. Frankly, we would hold that those are state judges, elected in multiple districts, who would make that determination. If it is a federal judge, those are appointed of course, and in theory, there is a federal judge in Iowa can make this decision.

No further testimony

General Discussion among committee members

Vice Chair Myrdal voiced apprehension over the amount of power given to the counties. Stated her desire to have discussions with the commissioners in her county in an effort to understand better the specific concerns they have with the bill.

Chairman Luick agreed with Vice Chair Myrdal, and further stated the need to have acreage limitation in place.

Senator Osland called upon Aaron Birst for further question.

Senator Osland: Has there ever been a case where this has been an issue, other than what we are seeing today?

Aaron Birst: Yes, for the most part, most of the time it is isolated to a county verses a city, in terms of a city expansion or whatever. Again, because of cities, counties, all townships support energy development, it have not been a lot of cases in terms of the political subdivisions having a problem with each other on eminent domain; but most of the political subdivisions understand that projects need to happen.

Senator Larsen: How about the Missouri river system and how every dam has been put on the reservation, Garrison Dam on the Three Affiliated Tribes, Fort Peck Dam in Montana; The reservations did not have much say in that at all.

Aaron Birst: That is a sad chapter in our history; I would that we are now much more willing to listen. However, at the end of the day, it comes down to politics and who has the votes and who does not.

Chairman Luick: I think it comes down to also to what is in the laws, because if it is not there, if it is something that can be tweaked, by golly somebody is going to go after it and try to misinterpret it.

Aaron Birst: You have an incredibly difficult job, not just on this issue but all around. We rely on the legislature to provide us our marching orders, and you have to make some very difficult decisions on who should wield authority; that is why you are paid the big bucks.

Senator Larsen: We had the Sandpiper Pipeline, which was a great idea, but it would have sent our oil to Duluth. When it stopped at the border, that was very frustrating, I do not understand how that state could stop that pipeline at the border and prevent it from going to Duluth.

Aaron Birst: Just to be clear, counties are supportive of projects that cross county lines. However, in that particular case, you have to deal with that in terms of balancing; personally, we would say that a state should be able to do that, the county is the microcosm of that. But, again, a judge will be the one making that call.

Chairman Luick: Closed hearing on SB 2238.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
2/13/2019
Job #32696

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to powers of the board of county commissioners; and to amend and reenact section 32-15-01 of the North Dakota Century Code, relating to limitations on eminent domain authority.

Minutes:

Attachments: 2

Chairman Luick: Called the committee to order on SB 2338. There were a few groups that were against the proposed bill because it went into their jurisdictional boundaries or cross county lines. There were 6-7 jurisdiction subdivisions that crossed over county lines. The intent of the bill was not for that. I talked to a few different county commissioners and lobbyists about what point does a county have fiscal impacts if a certain amount of acreage of another county is condemned and changed in their tax code for different taxing purposes. One of the county commissioners says nothing. We are looking at a situation where if you put in a transmission line for oil or water and the utility company needs to have some variances as far as how they can travel or use eminent domain in your county. I don't think that zero limitation should be there. I came up with 320 acres of area within another county so that if 320 acres or less is condemned, that county commission of that county would not have to be notified. If it is above 320, I and another county commissioner decided that that gets into the situation where it is two quarters and there might be a tax consequence the county should be aware of. That is what the amendment does.

Senator Hogan: Would it be the total property in a county or would it be an individual plot? If you had a pipeline going across a county, would you count all the area all the way across or would it just be that 1 plot is 320 acres?

Chairman Luick: One plot.

Senator Klein: Let's use Cass and Richland as an example. I know that back a few sessions, we filled the Brynhild room with folks from the Kindred school district. I understand where we are trying to go here. However, isn't this just going to get litigated anyway? Whether we pass this or not, someone is going to sue someone over what they believe is for the public good or blocking the ability for a county to grow. I am not sure how we can circle the wagons on

this one. It is a tough one. I have been chatting with folks and I never got a definite yes or no. I am suggesting that we need a few more minutes to think it through or run it by a few more folks. I am sensing this will be a difficult sell.

Chairman Luick: I do not know. I am the messenger.

Senator Myrdal: I agree. I think this is very difficult. I go back to the fact that 320 acres that have been in the family for 120 years cannot be replaced. It is very hard to make a decision on this. However, I like this better than it was. We deal with pipelines in my district. One of them went across our land and I could take you on a picnic and you would never know you are sitting on top of it.

Chairman Luick: That bill that we passed to make sure the oil and pipeline companies reform that land back to original condition was very good for what we did in the last few sessions on that. One of the county commissioners I spoke with said they will absolutely not back off of this one acre. If there is something going on in another county, is that the way you want that handled in that county? Now, quick taking of a domain is eminent domain on steroids. That is the way that is across the state. This is a buffered down portion of eminent domain. Yet, the county commission does not have to be notified.

Senator Myrdal: Do we have time to think on this a little longer?

Chairman Luick: Absolutely. I want you to think on it.

Senator Myrdal: This is something I want to talk to my three counties about. I am not going to make this decision on behalf of Cass county. No offense on Cass county but I can't.

Chairman Luick: I beg you to not do that because I get my butt in a ringer when I make decisions on farming things. I do not look at just my own district. As the chairman of this committee, I think about what is best for the state. I have been put through the ringer on these things because I have been looking at my district alone, or have not been looking at my district alone. That goes with the job.

Senator Osland: You can take a pig and do so much lipstick but it is still a pig. I think the genesis of this bill is for me, digging a ditch or running a pipeline is to go get a blessing from the county commission.

Chairman Luick: That is if you are in another county.

Senator Osland: If I am running a pipeline, I am in another county. If I have land in another county that goes into another county, then I am out of that county. With this bill, could the county of Lake Sacajawea, stop the Lake? They took eminent domain there.

Chairman Luick: I think it is just like what Senator Klein said. That is going to wind up in the courts. I am sure that case did. Eminent domain in that case would have no bearing.

Senator Osland: Under this bill, the county commission wouldn't have any say in that then?

Chairman Luick: Under this bill, it requires them to notify the county commission of the joining county and then they would have the authority to deny or approve such a motion. That doesn't mean it can't go to court.

Senator Osland: If they deny it, then what is the next step?

Chairman Luick: Municipal district court.

Senator Osland: So you go to court opposing the commissioner. You then go to the owner of the land. You have to go through two road blocks to get that job done.

Chairman Luick: I am not an attorney so I cannot tell you if that is correct.

Senator Osland: We are giving the commission power here. They may say they do not want to do that. Then we would have to litigate that.

Chairman Luick: I would think you would have a better understanding of that yourself being that you were once a county commissioner. Did you ever have anything like that where the county commission was sued then someone was there in that county to follow through on?

Senator Osland: We are a flat lined county and we have all sorts of water issues. I do not recall a law suit ever occurring on those issues. Going back to the eminent domain, we did have a power company that came and visited us. We had an informal information meeting. They told us they may come through out county with the line. They did the line but they took a different route. I am trying to approach this from the practical standpoint. If we had to do a ditch and get some property, according to this we would have to go to the county commission and get permission.

Chairman Luick: You need permission if it is more than 320 acres.

Senator Osland: Let us assume it is. If they said no, then we would have to litigate that. We are giving them that power. We would then have to go back and negotiate. Without, the county commission issue, we could negotiate and be done with it and not have to visit a court.

Chairman Luick: The whole thing comes down to property rights and if you want the people of ND to have the right to protect their property through an elected board.

Senator Hogan: If that land owner was protesting the taking through eminent domain and it went to court, the county could testify at that hearing correct? If there was a protest over eminent domain, that might be a legal question we want to ask someone so you do not have two court hearings on the same issue.

Chairman Luick: I am not a lawyer so I cannot answer that.

Senator Osland: If the county commission says no, then we have that hurdle. It is for the good of the people which is the definition of eminent domain, you would prevail. A judge

would say yes or no. You can have a judge in Missouri or San Francisco. You can get some different outcomes because of that.

Chairman Luick: It seems to be putting a layer of bureaucracy to get the job completed. That layer is a voted on board. That is the nemesis.

Senator Osland: What powers do the board have? We are giving them the power to do this. They do not have the power at this point in time. We are providing that torch through this bill.

Senator Myrdal: That is one of the reasons I think the counties need to communicate more on where they stand on this. They are split because of different county interests. These are basic core constitutional concepts we are dealing with. I would like to know the process in court and how expedient that would be. If this law passes, then those big projects would be aware of that. There are very strong interests on both sides. Fundamentally, we need to look out for the constitutional right of a land owner.

Senator Osland: You are talking about the eminent domain of the property. That is devastating, I understand. I met a guy on an airplane who owned land that was condemned because of eminent domain. He got sick right away when he brought it up. That is a different issue. That has been in law since the beginning of time. We are just talking about putting the layer of the county commission in that body. We are not talking about grabbing someone's land. That is not the issue. We have the Minot water deal which goes through multiple counties as well as other cases that are doing that same thing.

Senator Hogan: This is a huge issue in building the wall between Mexico in Texas because they are using eminent domain. That is related to this. I do not know if they are using counties or not. That is another place where there are huge eminent domain questions, particularly on the areas where U.S. land will be on the other side of the wall. They will own the property but have to access to service. It gets so complicated.

Senator Klein: The use of eminent domain without prior approval; if it is a project that someone believes is for the common good, doesn't matter. They get prior approval. If they do not, there is going to be litigation. I do not know if we can get to what you want to get to. It is going to be something on the books. Say the county doesn't get approval, then the county goes to court and the landowner says they do not want to do certain things but the county will still think it is good to do. Either way, we are in a position where we might not be following something that would be legal or illegal.

Chairman Luick: The evaluation principle is in question. If this land it condemned that has buildings on it, they are reduced in value. That is a problem for the county to assess the value. That is another concern because now you can have these 320 acres with several businesses on there. That will make some taxation evaluation changes to the condemned county. It is easy so point the finger at Richland and Cass county. It can happen in other places as well. If there is more information we need to get, we will see where we can go with that. For now, we will end the discussion on 2238.

Additional testimony was submitted to the clerk. See attachment #1 and #2.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2238
2/14/2019
Job #32806

- Subcommittee
 Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to powers of the board of county commissioners; and to amend and reenact section 32-15-01 of the North Dakota Century Code, relating to limitations on eminent domain authority.

Minutes:

Attachments: 0

Chairman Luick: Called the committee to order on SB 2238. Did everyone get their concerns and questions answered?

Senator Klein: Would you like to put that new amendment?

Chairman Luick: I thought we already did that.

Senator Klein: The 320 acres.

Chairman Luick: Isn't that already on there?

Senator Klein: Amendment 01001 is yes.

Chairman Luick: The last part of that is the 320 acres which is not on the bill yet.

Senator Klein: If we would want to further amend because that is language in which the next amendment would provide for the 320 acres. The other language is still the same. I didn't move that first amendment.

Senator Klein: Moved to withdraw amendment 19.0976.01001.

Senator Osland: Seconded.

Chairman Luick: Any Discussion?

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Luick: Now we are back to the bare bill.

Senator Myrdal: Moved to Adopt Amendment 19.0976.01002.

Senator Larsen: Seconded.

Chairman Luick: Any Discussion?

Senator Myrdal: I visited with my three counties. I received mixed messages. Some hadn't read the bill and said yes. I told them to read the bill first. They all got back to me and asked if we can change the language too lesser and consult. I do not see that doing anything.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Klein: I appreciate all your efforts and I understand where you are going with this. If you look through all the testimony, it is difficult for me to support this.

Senator Klein: Moved a Do Not Pass as Amended.

Senator Osland: Seconded.

Chairman Luick: Any Discussion?

Senator Hogan: I think this has potential for a lot of unintended consequences. I know it primarily for one area but I think it has issues for the whole state. I will support the motion.

Senator Klein: This wasn't one of the easy ones. Most of us have struggled. We understand it is the Chairman's bill. We understand the issue it addresses. It also may affect other parts of the state. I feel that I can't support this.

A Roll Call Vote Was Taken. 4 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Hogan will carry the bill.

January 31, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 1, line 10, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Page 2, line 3, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Renumber accordingly

February 11, 2019

SK
1061
2/14/19

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 1, line 9, after "condemned" insert "exceeds three hundred and twenty acres [129.499 hectares] and

Page 1, line 10, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Page 2, line 2, after "property" insert "in excess of three hundred and twenty acres [129.499 hectares]"

Page 2, line 3, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2238**

Senate Agriculture _____ Committee

Subcommittee

Amendment LC# or Description: 19.0976.01001

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 Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan	X	
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2238**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: Withdraw Amendment 19.0976.01001

- 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 Klein Seconded By Osland

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	✓		Senator Hogan	✓	
Senator Myrdal- Vice Chair	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.: SB 2238**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.0976.01002

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 Myrdal Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Luick	x		Senator Hogan	x	
Vice Chair Myrdal	x				
Senator Klein	x				
Senator Larsen	x				
Senator Osland	x				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

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 Klein Seconded By Osland

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman		✓	Senator Hogan	✓	
Senator Myrdal- Vice Chair	✓				
Senator Klein	✓				
Senator Larsen		✓			
Senator Osland	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Hogan

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

REPORT OF STANDING COMMITTEE

SB 2238: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2238 was placed on the Sixth order on the calendar.

Page 1, line 9, after "condemned" insert "exceeds three hundred and twenty acres [129.499 hectares] and

Page 1, line 10, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Page 2, line 2, after "property" insert "in excess of three hundred and twenty acres [129.499 hectares]"

Page 2, line 3, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Renumber accordingly

2019 TESTIMONY

SB 2238

513 2238
1-31-19
#1 BGL
Seth A. Thompson

sathompson@vogellaw.com

January 18, 2019

VIA EMAIL ONLY

Dustin Gawrylow
North Dakota Watchdog Network
dgawrylow@watchingnd.com

Re: January 15, 2019 Open Records Request

Dear Mr. Gawrylow:

Thank you for the open records request you sent to Kim Schilke on January 15, 2019. Vogel Law Firm represents the Western Area Water Supply Authority ("WAWSA"), and I write in response to your request that seeks:

documentation for ALL usage of Eminent Domain and/or Quick Take since chartering by the state; when it has been executed and used, as well as when it has been threatened to be used (i.e., legal notice sent to land owners (i.e. legal notice sent to land owners)).

Your request is vague as to what is being sought; thus, I write for clarity. Your request asks for documentation for all usage of eminent domain and/or quick take since WAWSA's creation. It is unclear what documents your request seeks. Does your request seek all documents related the use of eminent domain and/or quick take since WAWSA creation? If so, please note such a request seeks thousands of documents and will require many hours of work to fulfill the request. By law, WAWSA is entitled to charge a reasonable cost for a public records request at .25 cents per page and \$25 per hour after the first hour. N.D.C.C. § 44-04-18(2).

Note that instances in which WAWSA has used eminent domain are in the public domain because eminent domain actions are litigated in the courts of North Dakota. Thus if you are seeking the instances in which eminent domain has been used, a list of district court case docket numbers in which WAWSA has used eminent domain can be provided. Please let me know if this will satisfy your request.

Your request also asks for documentation as to when eminent domain has been "threatened." Please clarify this request. For clarity, I do not understand your request to seek documentation in which WAWSA has merely explained the eminent domain process to a land owner, but seek your clarification.

VOGEL
Law Firm

US Bank Building | 200 North 3rd Street, Suite 201 | PO Box 2097 | Bismarck, ND 58502-2097
Phone: 701.258.7899 | Fax: 701.258.9705 | Toll Free: 877.629.0705

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www.vogellaw.com

5132238

1-31-19

#1 Pg 2

January 18, 2019

Page 2

I look forward to clarification of your open records request.

Sincerely,

A handwritten signature in cursive script that reads "Seth Thompson".

Seth A. Thompson

SAT:jjc

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1-31-19
#2 Pgl

**North Dakota Senate
Agriculture Committee
Chairman Larry Luick**

January 31, 2019

**By: Josh Wolsky
Alderman, City Council, City of Minot
josh.wolsky@minotnd.org
701-340-1763**

SB 2238

Chairman Luick and Members of the Senate Agriculture Committee, my name is Josh Wolsky. The governing body of the City of Minot is a city council consisting of the mayor and six aldermen. I am one of those six aldermen. On behalf of the City of Minot, thank you for the opportunity to speak today on behalf of our entire city council in opposition to SB 2238.

As a political subdivision, the City of Minot from time to time has to acquire property through eminent domain. We must, of course follow state and federal law whenever we use this tool. However, our policy is to use it sparingly. If at all possible, the City tries to avoid the use of eminent domain.

As a last resort tool, when we do exercise it, city staff and consultants, our legal team, and the City Council are all deeply involved in the process of acquiring the needed parcels. The City knows the detailed history of each parcel, and what the specific issues are regarding the acquisition of the parcel.

SB 2238 complicates this process tremendously. Let me address that both procedurally and substantively.

First, procedurally. SB 2238 would add another step at the beginning of the eminent domain process by adding approval of the County Commission to exercise eminent domain

SB 2238

1-31-19

#2 EGZ

proceedings. Let us note that the County Commission is likely not involved in the project or may only have limited knowledge of why the parcel is required for the project. The City would need to educate the County Commission as to the purpose of the acquisition which would require time and expenditure upon the City, and also the time of the County Commission. Additionally, the County Commission is likely busy with the matters the Commission must oversee, and this would add to their workload. Additionally, there is the risk that the Commission may want to block the acquisition for an unknown reason which could stop a necessary project from moving forward, which the County would not oversee or maintain, or otherwise have anything to do with.

Substantively, SB 2238 would result in a loss of local control. Involving the county in city business in this manner is nearly unprecedented. In what other area would we give the county essentially veto control over a city matter? We are a state that largely respects local control, which generally believes that elected officials closest to the matter are in the best position to weight competing issues, and ultimately be accountable for the decisions. Let's keep it that way. Let's not raise city decisions to a county level.

It is for these reasons that the City of Minot opposes SB 2238 and would ask for a Do Not Pass. Thank you and I will stand for questions.



SB 2238
1-31-19
#3 Phil
City of Watford City
213 2nd St. NE | P.O. Box 494
Watford City, ND 58854
Ph. 701-444-2533
Fax 701-444-3004
www.cityofwatfordcity.com

1/31/2019
10:00 AM – Roosevelt Room

Urge a DO NOT Pass on 2238

Chairman Luick and members of the Senate Agriculture Committee,

The city of Watford City would like to share its concerns with SB 2238. In our community of rapid growth, our elected city council and its appointed staff respect the property of the people of the community. We have completed many public improvement projects over the last decade. With the culture of respect, the fasted growing city in North Dakota has successfully completed these projects without needing to use eminent domain. Having it in the tool box, however is important as it brings people (who are frequently absentee and don't benefit from the public improvement) to the negotiating table. The city opposes any changes to NDCC 11-11-14 and NDCC 32-15-01 including the creations of NDCC 32-15-01-3.

- *Notwithstanding any other provision of law, a state entity or political subdivision may not acquire private property through the use of eminent domain without prior approval from the county commission of the county where the property is located.*

The issue that is created with this proposed provision is that you have a project of public benefit in one LPS (city) with an elected council with an outcome determined by a different elected board of a LPS (county). The provision has the potential to create significant strain between elected boards of LPS's that when working in harmony lead the best community outcomes and efficiencies with public dollars.

For these reasons Chairman Luick and members of the Senate Agriculture committee, the city of Watford City asked you to:

Provide a DO NOT Pass recommendation on SB 2238.

Thank you for the opportunity to share our concerns with you.

Mayor Phil Riely, City of Watford City
(701) 570-4338
Phil_riely@yahoo.com

SB 2238
1-31-19
#4 131

Testimony
Senate Bill 2238 – State Water Commission
Senate Agriculture Committee
January 31, 2019

Good morning Chairman Luick and members of the Senate Agriculture Committee. I am Tim Freije, Northwest Area Water Supply (NAWS)/Southwest Pipeline Project (SWPP) Section Head for the State Water Commission. I am appearing before you today regarding Senate Bill 2238, relating to the power of a County Commission to approve or deny our authority to exercise eminent domain.

The North Dakota State Water Commission (NDSWC) owns NAWS, SWPP, and the Devils Lake outlets. The North Dakota legislature has given NDSWC eminent domain authority including quick take, specifically for the construction of these projects. NAWS and SWPP are large regional water systems providing quality water to the citizens of North Dakota and are specifically authorized in legislation. The NDSWC administers the construction contracts for both projects. NAWS and SWPP comprise over 5,500 miles of pipelines and are currently serving roughly 90,000 citizens. There were roughly 11,000 easements acquired for the two projects, only 42 of which required the use of our eminent domain authority. The Devils Lake outlets have pumped 1.16 million acre-feet of water out of the lake, which equates to approximately 6.5 feet at current lake levels, and about 65,000 fewer acres of land being inundated by the lake. Eight of the twenty easements acquired for the outlets required the use of eminent domain. Based on these numbers, it is clear that we have used this authority sparingly. Extensive negotiations are completed before this authority is exercised.

On pipeline contracts, the pipeline alignment is not finalized until the design is between 60-90 percent complete. Easement acquisition cannot begin until this time which is usually within a few months of a project being bid. This leaves a fairly narrow window to obtain the necessary easements, and work often begins prior to all easements being acquired. Requiring the approval of a County Commission will only delay the process and would subjugate the authority specifically granted to us by the legislature to facilitate the construction of these important legislatively authorized projects.

There are also many occasions when the originally designed route changes. Some of the reasons for changing the route include actual field conditions, field conflicts, and the addition of users. Changes in routes happen during construction, and the easement is needed quickly so as to not delay construction. NDSWC's staff makes every effort to get the easement without the use of condemnation. NDSWC only resorts to condemnation when there are no other options available. The current century code allows NDSWC to take possession of the right-of-way after making a written offer to purchase and after depositing the amount with the clerk of the District court in the county where the property is located. This process can be completed within weeks. Adding an additional approval requirement from the County Commission will only extend the timeline for getting the easement. That will be detrimental to the completion of the construction contracts and will result in additive cost to state taxpayers.

Budgets for water development projects are based off of appropriations provided by the legislature and are not ambulatory, therefore, when costs

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1-31-19
#4 Pg 3

increase, either fewer citizens are served or serving them takes more time resulting in subsequently greater expense.

The NDSWC uses eminent domain authority very responsibly as evidenced in the minimal number of occasions when it has been used, and negotiated settlement is always preferred. While we use it sparingly, its use is critical in those instances when it is required to keep a project on schedule and reduce costs to the taxpayers.

We request that the proposed requirement for County Commission approval before using eminent domain be removed, especially for those projects for which the legislature has specifically provided us with quick take authority.

Mr. Chairman, this concludes my testimony on Senate Bill 2238. If you have any questions, I will do my best to address them.

SB 2238
1-31-19
#5 Pgl
701-223-4615
701-223-4645 (Fax)

NORTH DAKOTA

*Water Users
Association*

PO Box 2254 • Bismarck, ND 58502-2254

Testimony, SB 2238

10:00 AM, January 31, 2019

Roosevelt Park Room, State Capitol, Bismarck, ND

Jack Dwyer, North Dakota Water Users Association, North Dakota Water Resource Districts

Chairman Luick and members of the Senate Agriculture Committee:

My name is Jack Dwyer and I am representing the North Dakota Water Users Association and the North Dakota Water Resource Districts Association. I am here to testify on behalf of those groups in opposition to Senate Bill 2238.

Eminent domain judgements can be a large aspect of projects being conducted by our members intended to benefit the state and its residents. These state funded projects are often large in scale and span multiple counties. Waiting for approval for eminent domain from multiple counties would cause delays and cost the state money.

The North Dakota Water Users Association and the North Dakota Water Resource Districts Association ask for a DO NOT PASS recommendation of SB 2238.

Thank you for your time and allowing me to speak this morning.

**Testimony in Opposition to
SENATE BILL NO. 2238
Senate Agriculture Committee**

SB 2238
1-31-19
#6 Egl

January 31, 2019

Chairman Luick, Senate Agriculture Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to oppose SB 2238.

NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, and has been representing the energy industry since 1952.

SB 2238 provides, in Section 1, for the addition of a new subsection to Section 11-11-14 NDCC regarding the powers of the board of county commissioners. I have attached a copy of Section 11-11-14 NDCC in its entirety for your reference regarding the various powers of the board of county commissioners. SB 2238 provides for an additional power to the board of county commissioners regarding the approval or denial of the exercise of eminent domain authority by a state entity or political subdivision. Also, SB 2238, in Section 2, adds a new subsection to Section 32-15-01 NDCC regarding eminent domain with a limitation on the exercise of eminent domain by a state entity or political subdivision. The changes being proposed by SB 2238 would make the decision by a state entity or political subdivision to acquire property through eminent domain subject to another duplicated process for the prior approval by the county commission.

SB 2238 unnecessarily restricts and sets up a barrier to the process and use of eminent domain by a state entity or political subdivision. Several projects throughout the state would be detrimentally impacted and significantly delayed, if not completely prevented and cancelled, with this type of extra process required as proposed under SB 2238 before eminent domain is implemented.

SB 2238

1-31-19

#0 Pg 2

Further, SB 2238 is reversing and going in the complete opposite direction of the effort that was passed in the 2017 Session to unify and streamline the energy conversion and transmission facility siting process. In the 2017 Session, the Legislature passed SB 2286 (House vote of 92-0 & Senate vote of 47-0) which was an effort by a coalition of interested parties to identify and establish a unified and streamlined process to site energy conversion and transmission facilities with all relevant information being presented to the Public Service Commission which has the authority and oversight for siting. The Public Service Commission would review and include any local requirements within the issuance of a route and site approval for a facility. That effort was intended to establish and require a single streamlined siting process before the Public Service Commission at which time all concerns including any by the impacted local jurisdictions would be presented, raised and addressed. That streamlined process was intended to create an efficient process to avoid multiple local jurisdictions from holding multiple hearings with separate decisions, potentially inconsistent with each other, on the same subject matter.

The process being suggested under SB 2238 would create uncertainty and inconsistency with the exercise of eminent domain by a state entity or political subdivision. The process for eminent domain is already well defined and established as provided for in Chapter 32-15 NDCC. Copy attached for your reference. The process used with eminent domain situations does not need to be changed to include a separate requirement and prior approval by county commissioners. The additional layer of prior approval by the county commission is not appropriate nor necessary.

In conclusion, NDPC urges your opposition to **SB 2238** and respectfully requests a **Do Not Pass** recommendation. Thank you and I would be happy to try to answer any questions.

SB2238

1-31-19

#6 Pg 3

11-11-14. Powers of board of county commissioners.

The board of county commissioners shall have the following powers:

1. To institute and prosecute civil actions for and on behalf of the county and in its name.
2. To make all orders respecting property of the county.
3. To levy a tax not exceeding the amount authorized by law.
4. To control the finances, to contract debts and borrow money, to make payments of debts and expenses, to establish charges for any county or other services, and to control the property of the county.
5. To construct and repair bridges and to open, lay out, vacate, and change highways in the cases provided by law. But the board may not contract for the construction of bridges costing more than one hundred dollars without first complying with the provisions of chapter 24-08.
6. To establish election precincts in the county in areas outside the boundaries of incorporated cities except as provided in chapter 16.1-04.
7. To equalize the assessments of the county in the manner provided by law.
8. To furnish to the county officers the necessary telephone, postage, telephone and telegraph tolls, and all other things necessary and incidental to the performance of the duties of their respective offices to be paid out of the county treasury.
9. To furnish a fireproof safe in which to keep all the books, records, vouchers, and papers pertaining to the business of the board.
10. To dispose of property of the county in the manner provided in chapter 11-27.
11. To purchase lands in lieu of those sold.
12. To grant to any person the right of way for the erection of telephone lines, electric light systems, water or wastewater systems, or gas or oil pipeline systems over, under, or upon public grounds, county streets, roads, or highways.
13. To establish a garbage and trash collection system encompassing all or any part of the territory of the county. The words "garbage and trash collection system" include the operation and maintenance of one or more sanitary landfill sites, or other types of processing sites for the disposal of trash and garbage. The board may operate such system in cooperation with any one or more political subdivisions of this or any other state in accordance with chapter 54-40. The board may borrow money by issuing certificates of indebtedness, repayable from fees or special assessments, or both, which may be charged to the proper parcels of land or to persons receiving the direct benefits of the garbage and trash collection system, or repayable in such other manner as may be provided by law, in order to purchase the initial equipment and land necessary for operation of the system. If the board resolves to establish such a system, the expenses of establishing, operating, and maintaining it may be financed by fees charged to persons receiving direct benefits or by special assessment against the parcels of land properly charged therewith, or by both such fees and assessments. The assessment may be made, published, altered, appealed from, and confirmed under the procedures set forth in chapter 11-28.1.
14. To maintain, in its discretion, all public roads and private highways and roads that are being used as part of regularly scheduled public schoolbus routes.
15. To expend county funds for the purpose of participating in an organization of county governments pursuant to section 11-10-24. This subsection does not authorize a mill levy, and the limitations embodied in section 57-15-06 apply to expenditures under this subsection, which expenditures shall be from the county general fund.
16. To expend county funds to finance in part or entirely for county employees a group insurance program for hospital benefits, medical benefits or life insurance, and a group retirement program through either the state retirement program or a private company.

SB2238

1-31-19

#6 Pg 4

17. To do and perform any other duties prescribed by law.
18. To loan or grant money to and secure a mortgage from individuals, associations, corporations, or limited liability companies and to purchase ownership shares in corporations, limited liability companies, or other business associations as provided through the procedures established by the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383; 88 Stat. 633; 42 U.S.C. 5301 et seq.]. This power applies to all community development block grant transactions of the board of county commissioners, including any transactions prior to July 1, 1987. The county is not lending its funds or extending its credit to any individual, association, or organization under this subsection and no general liability on the part of the county is incurred.
19. To license, tax, and regulate pawnbrokers outside of municipalities.
20. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its name for use and control as provided by law, both real and personal property and easements and rights of way within the county for all purposes authorized by law or necessary to the exercise of any power granted.
21. To participate and enact or adopt ordinances and resolutions necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR 61.6.
22. To regulate the confinement and control of dogs, cats, and other household pets, provided the regulations do not conflict with rules adopted by the state board of animal health.
23. To require that financial records, including all revenues, expenditures, fund balances, and complete budgets, be submitted to the board of county commissioners at a time and in a format requested by the board by all boards, authorities, committees, and commissions with members appointed by the board of county commissioners before the board's consideration of the budget and tax levy.
24. To expend county funds as a donation for a capital improvement project to a nonprofit health care facility within the county.
25. To expend county funds for eradication of gophers, prairie dogs, rabbits, crows, or magpies.
26. To expend county funds to enhance communications infrastructure for countywide benefit.
27. To provide for the planning, design, acquisition, development, operation, maintenance, and support of automation and telecommunications resources.
28. To provide for firebreaks and other fire protection and suppression measures.
29. To construct, equip, operate, and maintain county buildings, including court facilities, correction centers, jails, and other law enforcement facilities.
30. To require that all financial records, including all revenues, expenditures, fund balances, and complete budgets be submitted to the board of county commissioners at a time and in a format requested by the board of county commissioners by all boards, authorities, committees, and commissions appointed by the board of county commissioners before consideration by the board of county commissioners of the budget and levy request.

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North Dakota Legislative Branch

Chapter 32-15

Eminent Domain

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**CHAPTER 32-15
EMINENT DOMAIN**

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

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

32-15-02. Purposes for which exercised.

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, park district, or school district; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city, or for draining any county or city; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, or park district, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, and irrigating, draining, and reclaiming lands.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise, for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams.
6. Byroads leading from highways to residences and farms.
7. Telegraph and telephone lines.
8. Sewage disposal of any city, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university.
9. Cemeteries and public parks.
10. Oil, gas, coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such

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- gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.
11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

32-15-03. What estate subject to be taken.

The following is a classification of the estates and rights in lands subject to be taken for public use:

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

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

32-15-03.1. Declaration of legislative intent.

Repealed by omission from this code.

32-15-03.2. Termination of estates greater than an easement.

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

32-15-04. What property may be taken.

The private property which may be taken under this chapter includes:

1. All real property belonging to any person.
2. Lands belonging to this state or to any county, city, or park district, not appropriated to some public use.
3. Property appropriated to public use, but such property shall not be taken unless for a more necessary public use than that to which it has been appropriated already, and use by a public corporation shall be deemed a more necessary public use than use for the same purpose by a private corporation or limited liability company, and whenever a right of way shall have been taken and the person, firm, corporation, or limited liability company taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, corporation, or limited liability company to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system.

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6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
 7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

32-15-05. What must appear before property taken.

Before property can be taken it must appear:

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

32-15-06. Entry for making surveys.

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

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

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.
2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.
3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.
4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

32-15-06.2. Disclosures.

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

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affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

32-15-07. Proceedings by civil action.

Repealed by omission from this code.

32-15-08. Form of summons - When served.

Repealed by omission from this code.

32-15-09. Service by publication.

Repealed by omission from this code.

32-15-10. Copy of summons served through mails.

Repealed by omission from this code.

32-15-11. Service complete, when.

Repealed by omission from this code.

32-15-12. When note of issue filed.

Repealed by omission from this code.

32-15-13. Jury may be demanded.

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

32-15-14. When sheriff's fees to be advanced by plaintiff - Surety for jury fees.

Repealed by S.L. 1981, ch. 354, § 1.

32-15-15. Note of issue, filing.

Repealed by omission from this code.

32-15-16. Special term of court to hear issue.

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

32-15-17. Issues tried at any term of court.

The trial of any action under this chapter may be had at any general, special, or adjourned term of district court, held or called in the county in which such action may be pending, and such action may be tried at any such term. If issue is not joined prior to the commencement of any regular, special, or adjourned term, the plaintiff nevertheless may require said cause to be tried on such day thereof as the court may order, but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

32-15-18. What complaint must contain.

The complaint must contain:

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

32-15-19. Joinder, consolidation, and separation of proceedings.

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

32-15-20. Who may defend.

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

32-15-21. Power of court.

1. The court shall have power:
 - a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
 - b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages for the property.
 - c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22 or 49-22.1, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

32-15-22. Assessment of damages.

The jury, or court, or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein. If it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.
3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subsections 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the benefit shall be less than the damages so assessed the

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former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.

5. As far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.

32-15-22.1. Eminent domain - Compensation for moving personal property.

Repealed by S.L. 1973, ch. 407, § 17.

32-15-23. When right to damages accrues.

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

32-15-24. When title defective.

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

32-15-25. When judgment paid.

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

32-15-26. Payment or deposit - Proceedings annulled.

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

32-15-27. Final order - Filing.

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

32-15-28. Public corporation bound by judgment.

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

32-15-29. When possession taken - How money paid defendant - Acceptance - Abandonment of defenses.

At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in

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

32-15-30. Payment of money into court at risk of plaintiff.

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

32-15-31. Deposit of money with state treasurer.

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

32-15-32. Costs.

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

32-15-33. Rules of practice.

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

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32-15-34. New trials and appeals.

The provisions of this code relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter, but upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve, and hold possession of the property sought to be condemned as provided in section 32-15-29 and to devote the same to the public use in question, and no motion for a new trial or appeal after such payment shall retard the contemplated improvement in any manner. Any money which shall have been deposited, as provided in section 32-15-29, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

32-15-35. Eminent domain proceedings - Costs of defendant to be paid when proceedings withdrawn or dismissed by party bringing the proceedings.

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

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SENATE AGRICULTURE COMMITTEE

Date: January 31, 2019 at 10:00 a.m.

**North Dakota Department of Transportation
Mark Gaydos, Environmental and Transportation Services Director**

House Bill 2238

Good morning, Mr. Chairman and members of the committee. I am Mark Gaydos, Environmental and Transportation Services Director at the North Dakota Department of Transportation (Department). I am here to oppose Senate Bill 2238. Thank you for giving me the opportunity to discuss this proposed bill and answer any questions.

The Department acquires highway right of way by purchase or eminent domain in accordance with North Dakota Century Code (NDCC) Title 24. The statutes in Title 24 are specific to the Department's needs and unique issues. Senate Bill 2238 changes the established process, and creates ambiguity by requiring the Department to obtain approval from a County Commission prior to exercising eminent domain proceedings.

The Department believes the bill unreasonably delegates its responsibility and authority for eminent domain to County Commissions. The bill delays and adds expense for a public project. There are no timelines or specific guidance provided on how this new process would work. For example, how and when does a commission have to act, or how does the commission make the determination to allow or disallow eminent domain.

Many times, the Department is able to negotiate an agreement, but needs to process an eminent domain action in order to resolve title issues, such as probates or liens. This resolution mutually benefits both parties and is not appealed.

The bill restricts the Department's ability to enter directly into eminent domain and may even stop a project. Specifically, the bill gives the County Commission arbitrary discretion to approve or stop a project on the State Highway System that someone may disagree with, even though the project is necessary and reasonable.

The Department follows State statutes, uses sound judgement, and applies reasonable process in its exercise of eminent domain. The Department is familiar with and knowledgeable with the proposed highway project, and is in the best position to make project decisions. For the above stated reasons, the Department asks for a Do Not Pass on Senate Bill 2238.

Thank you, Mr. Chairman, I would be happy to answer any questions.

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Title.

Prepared by the Legislative Council staff for
Senator Luick

January 31, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2238

Page 1, line 10, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Page 2, line 3, after the underscored period insert "For purposes of this subsection, the term "political subdivision" does not include a municipality that exercises the municipality's eminent domain or extraterritorial authority within the county where the municipality is located."

Renumber accordingly

**North Dakota Senate
Agriculture Committee
Chairman Larry Luick**

January 31, 2019

**By: Josh Wolsky
Alderman, City Council, City of Minot
josh.wolsky@minotnd.org
701-340-1763**

SB 2238

Chairman Luick and Members of the Senate Agriculture Committee, my name is Josh Wolsky. The governing body of the City of Minot is a city council consisting of the mayor and six aldermen. I am one of those six aldermen. On behalf of the City of Minot, thank you for the opportunity to speak today on behalf of our entire city council in opposition to SB 2238.

As a political subdivision, the City of Minot from time to time has to acquire property through eminent domain. We must, of course follow state and federal law whenever we use this tool. However, our policy is to use it sparingly. If at all possible, the City tries to avoid the use of eminent domain.

As a last resort tool, when we do exercise it, city staff and consultants, our legal team, and the City Council are all deeply involved in the process of acquiring the needed parcels. The City knows the detailed history of each parcel, and what the specific issues are regarding the acquisition of the parcel.

SB 2238 complicates this process tremendously. Let me address that both procedurally and substantively.

First, procedurally. SB 2238 would add another step at the beginning of the eminent domain process by adding approval of the County Commission to exercise eminent domain

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proceedings. Let us note that the County Commission is likely not involved in the project or may only have limited knowledge of why the parcel is required for the project. The City would need to educate the County Commission as to the purpose of the acquisition which would require time and expenditure upon the City, and also the time of the County Commission. Additionally, the County Commission is likely busy with the matters the Commission must oversee, and this would add to their workload. Additionally, there is the risk that the Commission may want to block the acquisition for an unknown reason which could stop a necessary project from moving forward, which the County would not oversee or maintain, or otherwise have anything to do with.

Substantively, SB 2238 would result in a loss of local control. Involving the county in city business in this manner is nearly unprecedented. In what other area would we give the county essentially veto control over a city matter? We are a state that largely respects local control, which generally believes that elected officials closest to the matter are in the best position to weight competing issues, and ultimately be accountable for the decisions. Let's keep it that way. Let's not raise city decisions to a county level.

It is for these reasons that the City of Minot opposes SB 2238 and would ask for a Do Not Pass. Thank you and I will stand for questions.

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Seth A. Thompson

sathompson@vogellaw.com

January 18, 2019

VIA EMAIL ONLY

Dustin Gawrylow
North Dakota Watchdog Network
dgawrylow@watchingnd.com

Re: January 15, 2019 Open Records Request

Dear Mr. Gawrylow:

Thank you for the open records request you sent to Kim Schilke on January 15, 2019. Vogel Law Firm represents the Western Area Water Supply Authority ("WAWSA"), and I write in response to your request that seeks:

documentation for ALL usage of Eminent Domain and/or Quick Take since chartering by the state; when it has been executed and used, as well as when it has been threatened to be used (i.e., legal notice sent to land owners (i.e. legal notice sent to land owners)).

Your request is vague as to what is being sought; thus, I write for clarity. Your request asks for documentation for all usage of eminent domain and/or quick take since WAWSA's creation. It is unclear what documents your request seeks. Does your request seek all documents related the use of eminent domain and/or quick take since WAWSA creation? If so, please note such a request seeks thousands of documents and will require many hours of work to fulfill the request. By law, WAWSA is entitled to charge a reasonable cost for a public records request at .25 cents per page and \$25 per hour after the first hour. N.D.C.C. § 44-04-18(2).

Note that instances in which WAWSA has used eminent domain are in the public domain because eminent domain actions are litigated in the courts of North Dakota. Thus if you are seeking the instances in which eminent domain has been used, a list of district court case docket numbers in which WAWSA has used eminent domain can be provided. Please let me know if this will satisfy your request.

Your request also asks for documentation as to when eminent domain has been "threatened." Please clarify this request. For clarity, I do not understand your request to seek documentation in which WAWSA has merely explained the eminent domain process to a land owner, but seek your clarification.

VOGEL
Law Firm

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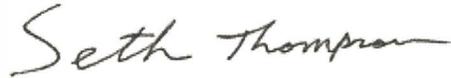
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I look forward to clarification of your open records request.

Sincerely,



Seth A. Thompson

SAT:jjc