

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1324

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1324
2/12/2021

Relating to the exercise of eminent domain; and to provide a penalty

Chairman Dockter: (10:04). Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Penalty
- Methods of Quick Take

Rep. Kading: Introduced the bill. Testimony #6532.

Ryan Riesinger, Vice President Airport Association of ND and Director of Grand Forks Regional Airport Authority: In opposition, testimony #6479.

Stephanie Dassinger, ND League of Cities: In opposition, testimony # 6535.

Terry Traynor, Association of Counties: In opposition, no written testimony.

Additional written testimony:

#s6463, 6456, 6534.

Vice Chairman Pyle: (10:45). Closes the hearing.

Carmen Hickie, Committee Clerk

Mr Chairman and members of the committee, HB 1324 is in regard to what is commonly referred to as quick take eminent domain.

This issue was brought to me by a constituent who was dealing with quick take. His frustration stemmed from the fact that there was no consistent application of eminent domain and Quick Take. The authority came and offered him \$1,200 I believe he said for a pipeline through his yard. The line would take his house out of compliance and therefore unable to get a mortgage. Ultimately, after a lot of back and forth the actual value determined upon his property was around \$30,000 along with an exception to zoning and code. Others in his area took the \$1,200 not knowing any better. If there was requirements as to consistent use of quick take and exceptions to compliance, the result would be much more just.

There are 4 basic eminent domain methods which are often referred to as quick take, though the reference is not always technically accurate. For the sake of this discussion I will refer to the 4 methods as a form of Quick Take.

The bill provides for a uniform change for all 4 sections of quick taking. If property is taken (whether an easement or all of it) an automatic grandfathering to all applicable jurisdiction codes (zoning, codes, regulations, etc) is granted such that the taken property is considered as it was prior to the taking. What this effectively does is if a sewer line is installed via quick take on ones property and there is a setback of 50' from any lines, and the sewer line is 40' from the house, the house is not out of code and zoning compliance. If a house is not in compliance with code and zoning, there may be insurance issues, mortgage denials, and the lack of an ability to rebuild in the event of a fire or disaster.

Now I am going to talk about Changes for specific sections related to takings. I tried to draft such that all 4 used very similar rules for taking. Prior to this bill there were 4 different sets of rules for the 4 different sections related to takings. Some of the changes are standard for other forms of quick take but not currently in the stated section of code.

Section 2-06-08 uses the eminent domain process as set out in Chapter 32-15, not quick take technically. Though there is the ability to take possession prior to proceedings; which is effectively the same as quicktake. Airport. Changes include:

1. **Require a deposit with clerk prior to taking possession.**
2. **Penalty if deposit is less than reasonable value – if 10% less than determined value, penalty of 25% of value of taking to be paid to land owner. This incentivizes jurisdictions not to low ball like in my constituent's case.**
3. **If Court ultimately finds taking was unnecessary penalty of 50% of determined value plus availability of punitive damages. Once the taking is done, and the court finds it unjust, there is currently no remedy for the landowner. Law currently provides "too bad, the deed is done." Here is your payment. One of the requirements for eminent domain is necessity**

and this bill finds a reasonable compromise. If there wasn't a necessity as determined by the court, then a penalty is paid.

- 4. Attorneys fees are to be paid by the government if the deposit is 10% less than determined value**

Section 40-22-05 provides for quick take under a narrow exception when the property being used is for a right of way. An appeal under this section would ultimately follow the same process as set out in Chapter 32-15.

32-15 Amendments only apply to the narrow exception. The changes include:

- 1. There is a Penalty if the deposit is less than reasonable value – if 10% less than determined value, penalty of 25% of value of taking is to be paid to land owner**
- 2. If Court ultimately finds the taking was unnecessary, a penalty of 50% plus availability of punitive damages is allowed at the courts discretion.**
- 3. Attorneys fees are to be paid by government if the deposit is 10% less than determined value**

Subsection 2 of Section 61-16.1-09 also requires the same eminent domain process be used with the exception of the right of way (as in section 40-22-05) where a “quick take” procedure would be used.

61-16.1-09 amendments only apply to quick take procedure

- 1. The changes to this section place it in the same form as the previous section**

Section 61-24.8-06 is also the same as the other sections in that any property required for an improvement must follow the eminent domain procedure as outlined in Chapter 32-15, unless the property is necessary for a right of way in which case a quick take procedure can be used.

61-24.8-06 amendments only apply to quick take procedure

- 1. The changes to this section place it in the same form as the previous 2 sections**

Thank you and I will stand for questions.



Airport Association of North Dakota

Matthew Remyse - President Ryan Riesinger - Vice President

Jordan Dahl - Sec. / Treasurer

P.O. Box 2845, Fargo, North Dakota 58108-2845

(701) 355-1808

February 12, 2021

RE: Testimony to House Political Subdivisions Committee on HB 1324 – Relating to the exercise of Eminent Domain

Chairman Dockter and members of the committee,

I am Ryan Riesinger, Vice-President of the Airport Association of North Dakota (AAND) and Executive Director of the Grand Forks Regional Airport Authority (GFK). I want to thank you for the opportunity to testify here today. AAND is the professional organization for North Dakota Airports and it serves to promote airports, aviation, and safety across the state. I am here today on behalf of AAND and GFK to express our opposition of the amendments and reenactment of HB 1324.

There is an on-going and continuous need to develop and maintain our state's airports. A key component for this development is land. In most cases airports have the land they need for development, but occasionally there is a need to expand beyond the airport's current boundaries.

Another important factor in developing our airports is federal funding, which is primarily through the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). Federal grants received through AIP are used to fund eligible capital improvement projects and our airports compete on a national level for this funding. In order to receive an AIP grant the airport must have control of the land that is going to be developed. If an airport cannot show control of the land they cannot accept federal funds and their project may become delayed.

There is currently a clearly defined process for an airport to proceed with land acquisition. In order to meet FAA requirements and utilize federal funding for purchasing land, the airport must complete an FAA approved "Airport Master Plan" and "Environmental Assessment". Each of these steps include public forums or hearings where stakeholders, including adjacent landowners, can attend, ask questions, and express concerns, all of which are documented as part of the process. If, after receiving the necessary approvals from the FAA, the airport decides to proceed with land acquisition, they must follow FAA Advisory Circular (AC) 150/5100-17 *Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects* and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PI 91-646, as amended), also known as the Uniform Relocation Act. The minimum requirement for these type of acquisitions is that the property be appraised by a qualified appraiser and that appraisal must be reviewed by another qualified appraiser. Then and only then can an initial offer of just compensation be made. The just compensation offered must not be less than the amount of the appraised market value approved by the review appraiser. Only when negotiations in good faith for an amicable purchase agreement have proven unsuccessful can an airport apply its eminent domain authority and file condemnation for possession of the needed property. This is a decision that is not made lightly by an airport authority, as it is our first choice to negotiate in good faith and come to a mutually agreeable solution. However, we also cannot unduly delay airport development that is intended to meet the aviation and safety needs of our tenants, users, and communities.

More specifically regarding some of the language in HB 1324, it requires that an airport authority deposit with the court at least 10% of the *reasonable value* of the property prior to taking possession of any property to be acquired by eminent domain proceedings. Failure to make this minimum deposit subjects an airport authority to a penalty of 25% of the *reasonable*

value of the property. Aside from the astronomical amount of the penalty, we see a number of issues. First, the concept of *reasonable value* does not appear in the eminent domain statutes. References are to *fair market value* – a term that has developed a more or less accepted meaning in legal parlance over the span of decades. Injection of a new concept like *reasonable value* will require courts to develop jurisprudence to flesh out this concept on a case-by-case basis with the potential for inequitable application. Second, at what stage of the eminent domain proceedings will the *reasonable value* be determined? What may initially appear *reasonable* to an airport authority at the outset of eminent domain proceedings may be quite a different value at the end of the proceedings. Third, providing that airport authorities cannot use quick-take procedures unless they comply with the North Dakota Century Code requiring money to be deposited with the Court seems redundant. That is already constitutionally required.

The bill states that if a court determines the use of eminent domain is not authorized, the court shall order the airport authority to pay a 50% penalty, and punitive damages. This seems to be another solution in search of a problem. All AIP grant funded land acquisitions must go through a needs-based assessment. Therefore, it is difficult to rationalize a situation where the land acquisition wouldn't satisfy the public use element. Further, a penalty equal to 50% of the *reasonable value* PLUS punitive damages is simply un-reasonable, and outrageous.

The provision that all property taken must “maintain the same zoning restrictions and property classification in place before the property was taken” is especially onerous and problematic for airports. As noted previously, land acquired at airports with federal funding has already gone through a lengthy justification process and is specifically recognized as being needed for airport use. For this land to not be able to be zoned accordingly would prevent it

from being used for the intended purpose of the purchase, which also may prevent needed safety enhancements.

In closing, due to HB 1324's ambiguous language, excessive penalties, and overreaching requirements, AAND and its members, and the Grand Forks Regional Airport Authority are in opposition of the bill as amended. We respectfully request that the committee provide a "Do Not Pass" on HB 1324. I thank you for the opportunity to provide testimony today and will take any questions the committee may have for me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ryan Riesinger', with a long horizontal flourish extending to the right.

Ryan Riesinger
Vice-President, Airport Association of North Dakota
Executive Director, Grand Forks Regional Airport Authority

February 12, 2021
House Political Subdivisions Committee
HB 1324
Rep. Jason Dockter, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. I am the deputy director and attorney for the League. The North Dakota League of Cities appears in opposition to HB 1324.

The League's opposition to HB 1324 centers around Section 2 of the bill. Section 2 relates to a city acquiring property through eminent domain for right of way for the opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley or for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage. The League is sensitive to the fact that use of eminent domain for city projects is concerning to a lot of citizens; however, that must be balanced with the fact that this bill directly impacts a city's ability to perform street, water and sewer projects. These projects are core city services that citizens rely on cities to provide.

To understand the full process, N.D.C.C. § 40-22-05 must be read in conjunction with NDCC ch. 32-15. N.D.C.C. § 32-15-01(2) requires that a city that is acquiring property through eminent domain pay the owner "just compensation." Further, cities are under a duty to make every reasonable and diligent effort to acquire property by negotiation. Before beginning negotiation, the city must establish an amount which it believes is just compensation for the property and make an offer for the full amount to the property owner. That offer must include an appraisal or a written statement and summary providing a basis for the city's determination of what is "just compensation." N.D.C.C. § 32-15-06.1.

On page 4 of the bill at lines 8, 12, and 14 a new term "reasonable value" is introduced. "Reasonable value" is not defined, and it is unclear what metric is used to determine "reasonable value." This introduction of a new undefined term is problematic because it provides cities with no direction on how to determine this value and will likely result in litigation for parties to try and determine what this term means.

Current law only allows property to be acquired through eminent domain if it is for a public purpose. At page 4 of the bill, lines 10-11, the concept of "the taking of the property was not necessary" is used. It is not clear what this language means. Again, litigation would likely be needed to determine what this language means.

Next, on page 4 at lines 9 and 12, penalty provisions and punitive damages are added to NDCC § 40-22-05. These penalty and punitive damages provisions relate back to whether a deposit or payment is made with relation to the undefined term "reasonable value" or whether a taking "was not necessary" which, again, is undefined. This language would subject a city to penalties and punitive damages based on a mistake in the understanding of undefined terms in the bill.

On page 4, lines 13-15, there is a provision for paying attorney fees when the fees are less than ten percent of the reasonable value of the property. Attorney fees are already addressed in N.D.C.C. 32-15-32. Section 32-15-32, allows the court to award reasonable attorney fees. The language in this bill appears to be narrower than existing law and would potentially result in landowners, who likely would have received attorney fees under the current law, not receiving attorney fees under this new standard. It also raises the question on whether a city would be allowed to pay attorney fees if they exceeded the 10% threshold in the bill.

On page 4, lines 16-18 any property taken through eminent domain must maintain the same zoning restrictions and property classification as was in place before the property was taken. I am not sure what this language is intended to accomplish; however, this language seems to have unintended consequences. When acquiring right of way for projects, a city does not always obtain rights to the property in fee simple. Sometimes only an easement is needed. For example, an easement for a water line. This prohibition would seem to prohibit a property owner from ever changing a property's zoning in the future just because an eminent domain proceeding for an easement for a water line has occurred on the property.

Due to the many inconsistencies with existing law and uncertainties this bill would create, the North Dakota League of Cities respectfully requests a Do Not Pass Recommendation on HB 1324.

WRITTEN TESTIMONY OF
KYLE C. WANNER
EXECUTIVE DIRECTOR, NORTH DAKOTA AERONAUTICS COMMISSION
BEFORE THE
HOUSE POLITICAL SUBDIVISION COMMITTEE
FEBRUARY 12th, 2021
HOUSE BILL 1324

Chairman Dockter and members of the committee,

I am providing this written testimony to inform you of the Aeronautics Commission's concerns relating to current language that exists within House Bill 1324.

Our airports in North Dakota play an important role in supporting our communities and their businesses by providing efficient transportation options for people and products all throughout the state. The statewide economic impact study that the ND Aeronautics Commission conducted in 2015 revealed that the public use airports in the state greatly improve our standard of living and provide an annual economic impact of 1.6 billion dollars to the state's economy while supporting over 12,200 jobs. As our communities grow, our airports need to be provided the ability to expand in order to accommodate growing demands and to provide additional opportunities to the traveling public. In some cases, this requires an airport to be able to acquire land to allow for its ability to expand and further develop.

When an airport utilizes eminent domain, it is taken very seriously and is only considered when all other alternatives are studied and good faith efforts to negotiate with the landowners has occurred. Our airports must also justify the land being acquired through environmental and master planning studies. Throughout this planning process, the public and the affected landowners are provided multiple opportunities to provide feedback and concerns on all of the airport project alternatives. Once the alternatives are studied and feedback is received, an airport is able to determine the most appropriate path forward that achieves the justified project goals and has the least amount of impact on the landowners and the environment.

If land acquisition is deemed necessary and justified, the airport must also follow all federal procurement guidelines that are laid out within 49 CFR Part 24: The Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. This is a very in-depth process that requires that an airport receive a land appraisal by an approved federal appraiser and also procure a review appraisal. These documents are then utilized to establish fair market value and allows the airport to further negotiate in good faith with the landowners. Due to the fact that our airports follow the federal procurement process outlined in 49 CFR Part 24 and they work to attempt to address all known issues in the environmental and planning process, it is concerning that HB 1324 in its current

form, penalizes airports that are working to the best of their ability to improve their facility for the betterment of the general public.

Of additional concern, is the section of HB 1324 on page 2 lines 9-11 which states:

Notwithstanding any other provision of law, all property taken under this section must maintain the same zoning restrictions and property classification in place before the property was taken.

The reason that this section is of great concern is that this language may prohibit future development of our airports. If they are unable to rezone the land that they work to acquire, then it could also prevent the ability of the airport to develop that land for the specific purpose that they are acquiring it for in the first place. This new language could also jeopardize federal grant funding for land acquisition and development projects that require land acquisition as the sponsor would not be able to guarantee airport development land that cannot be rezoned and/or developed.

Overall, HB 1324 penalizes a public use airport for their attempts to enhance and grow their facility to accommodate the demands of the public and prevents their ability to rezone any newly acquired land. These two actions will negatively impact an airport authority to do the job to the best of their ability for which the state legislature empowers them through NDCC 2-06-07. This section provides a listing of the general powers of an airport authority and provides that they have the ability:

To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties.

The language in HB 1324 will make it exceedingly more difficult for our airports to “plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports, within this state.”

The role of the Aeronautics Commission is to work with our 89 public use airports and the Federal Aviation Administration to maintain and to enhance our aviation facilities as needed to meet the needs our communities. The current language that exists within Section 2-06-08 of the North Dakota Century Code is critical, as it allows our airports to grow and expand to benefit the public good. This section currently also allows the airport to meet the requirements of 49 CFR Part 24 as required to receive grants from the Federal Aviation Administration for airport development projects.

I appreciate the opportunity to provide this written testimony and request that consideration be made to amend or remove the sections that negatively affect North Dakota’s public-use airports.

Testimony Presented on HB 1324 to the

Political Subdivisions Committee

Representative Jason Dockter, Chairman

Brenda Derrig, City Engineer for City of Fargo

February 11, 2021

Mr. Chairman and Members of the Committee,

The City of Fargo understands and recognizes that the process of eminent domain can be very upsetting and confusing to property owners from whom the city needs land to construct a public project. The City makes every effort to negotiate fairly to ensure the best, most fiscally responsible use of taxpayer dollars to obtain the land, while following the approved process pursuant to North Dakota Century Code Ch. 32-15 and 40-22-05 when necessary for the benefit of the public. For several reasons highlighted briefly, the proposed amendments to NDCC 40-22-05 are of concern. First, as you know, NDCC 32-15-06.1 entitled Duty to negotiate requires the City to secure an appraisal and negotiate based on "just compensation." The proposed amendment requires a deposit based on the undefined term of "reasonable value." It is unclear how reasonable value is to be determined, when and by whom. Introducing a new and undefined term to the process is problematic.

As far as determining public necessity, it has been established by the court that the determination of necessity is within the province of the condemning authority and would only be overturned by the court if the City acted fraudulently. Thus, there is an elected body tasked with determining whether the use of the statutory process of securing land for public purposes is necessary. Certainly, if the court finds bad faith or fraudulent behavior on the part of the public entity, consequences may follow. However, the law provides for such damages already. To provide for a penalty, and punitive damages which by definition is a penalty, is both unnecessary and excessive.

Further, the proposed amendment provides for an award of attorney fees in certain circumstances. Attorney fees are already provided for by N.D. Cent. Code § 32-15-32 entitled Costs. The proposed language that ties the attorney fee amount to a percentage of the "reasonable value" presents several interpretation concerns, but more likely may result in the landowner not receiving attorney fees at all. Whether to award attorney fees and the amount of such fees are properly within the province of the judge, as provided for by the existing statute.

Finally, the proposed language that requires that the zoning must remain the same is concerning as it may create due harm, such as, in nonconformities. There may be times when a taking is for a particular use, such as a water treatment plant, that would result in a zoning change from residential to public institutional. The City has addressed nonconformities that occur from a public taking in the land development code, which legally protects land owners.

§20-1005. - Nonconformities Created by Public Action

When a conveyance of land to a federal, state, or local government for a public purpose results in the creation of nonconformity to [Article 20-04](#), [Article 20-05](#), or [Article 20-07](#) of the Land Development Code, such nonconformity shall not be deemed to be a violation of the Land Development Code. Such nonconformity shall be deemed to be in compliance with the Land Development Code until such time that subsequent development activity will trigger Land Development Code provisions as applicable at the time of such activity.

To prohibit the well-established and separate zoning process to occur due to the nature of securing the property would unseat the lawful local zoning authority, unnecessarily.

I seek your opposition to HB 1324, which in its current form will bring ambiguity to a clear process and create zoning nonconformities.

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1324

House Political Subdivisions Committee

February 12, 2021

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1324.

It is the position of the City of Grand Forks that this legislation, particularly Section 2—the amendment to N.D.C.C. § 40-22-05—is not necessary as it is duplicative of protections already provided for in N.D.C.C. § 32-15-32, confuses the issues of attorney's fees and is inconsistent with the law of punitive damages. The legislation provides "if the property owner's attorney's fees are less than ten percent of the reasonable value of the property, the court shall order the municipality to pay the property owner's attorney's fees." However, it is unclear if this is intended to preclude an award of attorney's fees more than ten percent of the reasonable value of the property since the court may already award reasonable attorney's fees pursuant to N.D.C.C. § 32-15-32 and N.D.C.C. § 32-15-35.

In addition, the legislation provides for punitive damages and multiple forms of penalties based on a necessity determination or mistake in value. Under N.D.C.C. § 32-03.2-11(5), to obtain punitive damages, a jury is required find, by clear and convincing evidence, the amount of punitive damages considers the degree of reprehensibility of the defendant's conduct, the awareness or concealment by the acting party, the profit obtained from the wrongful conduct and whether criminal sanctions have been imposed. Yet, this legislation could expose a City to punitive damages solely on a possible mistake or negligent conduct in evaluating the necessity and reasonable value of a piece of property.

The damages permitted by this legislation is concerning in that it is a mandatory penalty, based on the use of the word "shall," and is based on a percentage of the reasonable value of a piece of property. However, the term "reasonable value" is not defined, nor is there a defined means to determine this amount, since eminent domain is based on just compensation. Moreover, imposing a penalty that is likely based on a potential error in an appraisal is problematic for a city.

Finally, this legislation provides that all property taken by condemnation must maintain the same zoning restrictions and property classification. This is an indefinite requirement that will result in stagnation of zoning and municipal improvements. Rather the issue can be resolved, if necessary, through local non-conforming use or structure process.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1324.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1324
2/18/2021

Relating to the exercise of eminent domain; and to provide a penalty
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Chairman Dockter: (10:21). Opens for committee work

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	A
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Right of way
- Amendment
- Penalty

Rep. Ertelt: Discussed proposed amendment which adds, for right of way and fair market value, in many places. Testimony #6916. Made a motion to approve amendment.

Rep. Nehring: Second the motion.

Voice vote carried.

Rep. Ertelt: Do pass as amended

Rep. Nehring: Second the motion.

Representatives	Vote
Representative Jason Dockter	N

Representative Brandy Pyle	N
Representative Mary Adams	N
Representative Claire Cory	N
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	N
Representative Patrick Hatlestad	N
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	N
Representative Donald Longmuir	N
Representative Dave Nehring	Y
Representative Marvin E. Nelson	A
Representative Luke Simons	Y
Representative Nathan Toman	Y

5-8-1 failed.

Rep. Longmuir: Made a do not pass as amended.

Rep. Adams: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	N
Representative Marvin E. Nelson	A
Representative Luke Simons	N
Representative Nathan Toman	N

8-5-1 carried.

Rep. Klemin: Will carry the bill.

Chairman Dockter: (10:54). Closed for committee work.

Carmen Hickle, Committee Clerk

February 18, 2021

DP 2/18/21
lwf

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1324

Page 1, line 23, replace "reasonable" with "fair market"

Page 2, line 1, replace "reasonable" with "fair market"

Page 2, line 5, replace "reasonable" with "fair market"

Page 2, line 7, replace "reasonable" with "fair market"

Page 2, line 9, after "section" insert "for right of way"

Page 4, line 8, replace "reasonable" with "fair market"

Page 4, line 9, after the first "the" insert "fair market"

Page 4, line 12, replace "reasonable" with "fair market"

Page 4, line 12, remove "plus punitive"

Page 4, line 13, remove "damages"

Page 4, line 14, replace "reasonable" with "fair market"

Page 4, line 16, after "section" insert "for right of way"

Page 6, line 25, replace "reasonable" with "fair market"

Page 6, line 26, after the first "the" insert "fair market"

Page 6, line 29, replace "reasonable" with "fair market"

Page 6, line 30, remove "plus punitive damages"

Page 6, line 31, replace "reasonable" with "fair market"

Page 7, line 4, after "subsection" insert "for right of way"

Page 8, line 26, replace "reasonable" with "fair market"

Page 8, line 27, after the first "the" insert "fair market"

Page 8, line 30, replace "reasonable" with "fair market"

Page 8, line 30, remove "plus punitive damages"

Page 9, line 1, replace "reasonable" with "fair market"

Page 9, line 3, after "section" insert "for right of way"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1324: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1324 was placed on the Sixth order on the calendar.

Page 1, line 23, replace "reasonable" with "fair market"

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Page 9, line 3, after "section" insert "for right of way"

Renumber accordingly

21.0724.01000

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1324

Introduced by

Representatives Kading, Schmidt

Senator Sorvaag

1 A BILL for an Act to amend and reenact sections 2-06-08 and 40-22-05, subsection 2 of section
2 61-16.1-09, and section 61-24.8-06 of the North Dakota Century Code, relating to the exercise
3 of eminent domain; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 2-06-08 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 **2-06-08. Eminent domain - Penalty.**

- 8 1. In the acquisition of property by eminent domain proceedings authorized by this
9 chapter, an airport authority shall proceed in the manner provided by chapter 32-15
10 and other applicable laws.
- 11 2. An airport authority may use eminent domain to acquire property acquired by its
12 current owner by eminent domain proceedings. The authority may enter land to make
13 surveys and examinations related to eminent domain proceedings as long as doing so
14 results in no unnecessary damage.
- 15 3. Notwithstanding the provisions of any other statute, an authority may take possession
16 of any property to be acquired by eminent domain proceedings at any time after the
17 commencement of the proceedings. The authority may abandon the proceedings at
18 any time before final order and decree of the court having jurisdiction of the
19 proceedings, provided the authority is liable to the owner of the property for any
20 damage done to the property during possession by the authority.
- 21 4. Notwithstanding subsection 3, an airport authority may not take possession of any
22 property until the airport authority has made a deposit under section 32-15-26. If the
23 deposit is less than ten percent of the ^{Fair market} reasonable value of the property, the airport

1 authority shall pay a penalty of twenty-five percent of the ^{fair market} reasonable value of the
2 property to the property owner.

3 5. Except as otherwise provided in section 32-15-32, if the court determines the use of
4 eminent domain is not authorized under chapter 32-15, the court shall order the airport
5 authority to pay a penalty equal to fifty percent of the ^{fair market} reasonable value of the property
6 ~~plus punitive damages~~ to the property owner. If the property owner's attorney's fees
7 are less than ten percent of the ^{fair market} reasonable value of the property, the court shall order
8 the airport authority to pay the property owner's attorney's fees.

9 6. Notwithstanding any other provision of law, all property taken under this section must
10 maintain the same zoning restrictions and property classification in place before the
11 property was taken. ^{for right of way}

12 **SECTION 2. AMENDMENT.** Section 40-22-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **40-22-05. Condemnation of land and rights of way for special improvements - Taking**
15 **of possession - Trial - Appeal - Vacation of judgment - Penalty.**

16 1. Whenever property required to make any improvement authorized by this chapter is to
17 be taken by condemnation proceedings, the court, upon request by resolution of the
18 governing body of the municipality making ~~such~~the improvement, shall call a special
19 term of court for the trial of the proceedings and may summon a jury for the trial
20 whenever necessary. The proceedings ~~shall~~must be instituted and prosecuted in
21 accordance with the provisions of chapter 32-15, except that when the interest sought
22 to be acquired is a right of way for the opening, laying out, widening, or enlargement of
23 any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of
24 any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or
25 sewage, whether within or without the municipality, the municipality may make an offer
26 to purchase the right of way and may deposit the amount of the offer with the clerk of
27 the district court of the county wherein the right of way is located, and may thereupon
28 take possession of the right of way forthwith. The offer shall be made by resolution of
29 the governing body of the municipality, a copy of which shall be attached to the
30 complaint filed with said clerk of court in accordance with section 32-15-18.

- 1 2. The clerk shall immediately notify the owner or owners of the land wherein the right of
2 way is located of the deposit, by causing a notice to be appended to the summons
3 when served and published in said proceedings as provided in the North Dakota Rules
4 of Civil Procedure, stating the amount deposited or agreed in the resolution to be
5 deposited. The owner may ~~thereupon~~ appeal to the court by filing an answer to the
6 complaint in the manner provided in the North Dakota Rules of Civil Procedure, and
7 may have a jury trial, unless a jury be waived, to determine the damages. ~~However,~~
8 ~~upon~~Upon due proof of the service of ~~said~~the notice and summons and upon deposit
9 of the aggregate sum agreed in ~~said~~the resolution, the court may without further notice
10 make and enter an order determining the municipality to be entitled to take immediate
11 possession of the right of way.
- 12 3. If under laws of the United States proceedings for the acquisition of any right of way
13 are required to be instituted in or removed to a federal court, the proceedings may be
14 taken in that court in the same manner and with the same effect as provided in this
15 section and the clerk of the district court of the county in which the right of way is
16 located shall perform any and all of the duties set forth in this section, if directed to do
17 so by the federal court. The proceedings ~~shall~~must be determined as speedily as
18 practicable.
- 19 4. An appeal from a judgment in the condemnation proceedings shall be taken within
20 sixty days after the entry of the judgment, and the appeal shall be given preference by
21 the supreme court over all other civil cases except election contests. No final judgment
22 in the condemnation proceedings awarding damages to property used by a
23 municipality for street, sewer, or other purposes shall be vacated or set aside if the
24 municipality shall pay to the defendant, or shall pay into court for the defendant, in
25 cash, the amount so awarded.
- 26 5. The municipality may levy special assessments to pay all or any part of the judgment
27 and at the time of the next annual tax levy may levy a general tax for the payment of
28 the part of the judgment as is not to be paid by special assessment.
- 29 6. For the purpose of providing funds for the payment of the judgment, or for the deposit
30 of the amount offered for purchase of a right of way as provided above, the
31 municipality may issue warrants on the fund of the improvement district as provided in

1 section 40-24-19, in anticipation of the levy and collection of special assessments and
2 of any taxes or revenues to be appropriated to the fund in accordance with the
3 provisions of this title. The warrants may be issued upon the commencement of the
4 condemnation proceedings or at any time thereafter.

5 7. Upon the failure of the municipality to make payment in accordance with this section,
6 the judgment in the condemnation proceedings may be vacated.

7 8. ~~If the property to be taken under subsection 1 is a right of way and the deposit is less~~
8 ~~than ten percent of the ^{fair market} reasonable value of the property, the municipality shall pay a~~
9 ~~penalty of twenty-five percent of the ^{fair market} value of the property to the property owner.~~

10 9. ~~Except as otherwise provided in section 32-15-32, if the court determines the taking of~~
11 ~~the right of way was not necessary, the court shall order the municipality to pay a~~
12 ~~penalty equal to fifty percent of the ^{fair market} reasonable value of the property ~~plus punitive~~~~
13 ~~damages to the property owner. If the property owner's attorney's fees are less than~~
14 ~~ten percent of the ^{fair market} reasonable value of the property, the court shall order the~~
15 ~~municipality to pay the property owner's attorney's fees.~~

16 10. ~~Notwithstanding any other provision of law, all property taken under this section must~~
17 ~~maintain the same zoning restrictions and property classification in place before the~~
18 ~~property was taken.~~ ^{for right of way}

19 **SECTION 3. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 2. Exercise the power of eminent domain as follows:

22 a. Except as permitted under subdivision b, the board shall comply with title 32 for
23 the purpose of acquiring and securing by eminent domain any rights, titles,
24 interests, estates, or easements necessary or proper to carry out the duties
25 imposed by this chapter, and particularly to acquire the necessary rights in land
26 for the construction of dams, flood control projects, and other water conservation,
27 distribution, and supply works of any nature and to permit the flooding of lands,
28 and to secure the right of access to such dams and other devices and the right of
29 public access to any waters impounded thereby.

30 b. (1) If the interest sought to be acquired is an easement for a right of way for any
31 project authorized in this chapter for which federal or state funds have been

made available, the district may acquire the right of way by quick take eminent domain as authorized by section 16 of article I of the Constitution of North Dakota, after the district attempts to purchase the easement for the right of way by:

(a) Conducting informal negotiations for not less than sixty days.

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

[1] Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.

[2] Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.

[3] Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.

(2) Any written communication to the landowner must include contact information for responding to the board and a description of the required negotiation timeline.

(3) A district may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the district shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain.

1 After receiving the request, the county commissioners shall hold a public
2 meeting and give the landowner thirty days' notice of the meeting to allow
3 the landowner to attend. After receiving verification from the district that
4 there has been no reference or threat of quick take eminent domain by the
5 district during negotiations, the commissioners shall vote on whether to
6 approve the taking of the easement for a right of way using quick take
7 eminent domain. If the county commissioners approve the use of quick take
8 eminent domain by a majority vote, the district may take immediate
9 possession of the right of way, but not a blanket easement, if the district files
10 an affidavit by the chairman of the water resource board which states the
11 district has fulfilled the required negotiation steps and deposits the amount
12 of the written offer with the clerk of the district court of the county in which
13 the right of way is located.

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

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

24 c. If the deposit for property taken under subdivision b is less than ten percent of
25 the ^{fair market} reasonable value of the property, the water resource board shall pay a
26 penalty of twenty-five percent of the ^{fair market} value of the property to the property owner.

27 d. Except as otherwise provided in section 32-15-32, if the court determines the
28 taking of the right of way was not necessary, the court shall order the water
29 resource board to pay a penalty equal to fifty percent of the ^{fair market} reasonable value of
30 the property ~~plus punitive damages~~ to the property owner. If the property owner's
31 attorney's fees are less than ten percent of the ^{fair market} reasonable value of the property,

1 the court shall order the water resource board to pay the property owner's
2 attorney's fees.

3 e. Notwithstanding any other provision of law, all property taken under this
4 subsection must maintain the same zoning restrictions and property classification
5 in place before the property was taken.

6 **SECTION 4. AMENDMENT.** Section 61-24.8-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **61-24.8-06. Condemnation of land and rights of way for special improvements -**
9 **Taking of possession - Trial - Appeal - Vacation of judgment - Penalty.**

10 1. When property required to make any improvement authorized by this chapter is to be
11 taken by condemnation proceedings, the court, upon request by resolution of the
12 board of the district making the improvement, shall call a special term of court for the
13 trial of the proceedings and may summon a jury for the trial. The proceedings must be
14 instituted and prosecuted in accordance with chapter 32-15, except that when the
15 interest sought to be acquired is a right of way for the laying of any main, pipe, ditch,
16 canal, aqueduct, or flume for conducting water, whether within or without the district,
17 the district may make an offer to purchase the right of way and may deposit the
18 amount of the offer with the clerk of the district court of the county in which the right of
19 way is located, and may then take possession of the right of way. The offer must be
20 made by resolution of the board of the district, and a copy of the resolution must be
21 attached to the complaint filed with the clerk of court in accordance with section
22 32-15-18.

23 2. The clerk shall immediately notify the owners of the land on which the right of way is
24 located of the deposit by causing a notice to be appended to the summons when
25 served and published in the proceedings as provided in the North Dakota Rules of
26 Civil Procedure stating the amount deposited or agreed in the resolution to be
27 deposited. The owner may then appeal to the court by filing an answer to the
28 complaint in the manner provided in the North Dakota Rules of Civil Procedure and
29 may have a jury trial, unless a jury is waived, to determine the damages. ~~However,~~
30 ~~upon~~Upon due proof of the service of the notice and summons and upon deposit of
31 the aggregate sum agreed in the resolution, the court without further notice may make

Sixty-seventh
Legislative Assembly

1 and enter an order as authorized by section 16 of article I of the Constitution of North
2 Dakota.

3 3. If under laws of the United States proceedings for the acquisition of any right of way
4 are required to be instituted in or removed to a federal court, the proceedings may be
5 taken in that court in the same manner and with the same effect as provided in this
6 section and the clerk of the district court of the county in which the right of way is
7 located shall perform any and all of the duties set forth in this section if the clerk is
8 directed to do so by the federal court. The proceedings must be determined as
9 speedily as practicable.

10 4. An appeal from a judgment in the condemnation proceedings must be taken within
11 sixty days after the entry of the judgment and appeal must be given preference by the
12 supreme court over all other civil cases except election contests. No final judgment in
13 the condemnation proceedings awarding damages to property used by the district for
14 irrigation or other purposes may be vacated or set aside if the district pays to the
15 defendant, or into court for the defendant, the amount awarded in cash.

16 5. The district may levy special assessments within the district to pay all or part of the
17 judgment. To provide funds for the payment of the judgment or for the deposit of the
18 amount offered for purchase of a right of way, the district may issue bonds on the fund
19 of the improvement district as provided in section 61-24.8-09 in anticipation of the levy
20 and collection of special assessments or revenues to be appropriated to the fund in
21 accordance with this chapter. The bonds may be issued upon or after the
22 commencement of the condemnation proceedings.

23 6. Upon the failure of the district to make payment in accordance with this section, the
24 judgment in the condemnation proceedings may be vacated.

25 7. If the property to be taken under subsection 1 is a right of way and the deposit is less
26 than ten percent of the ^{fair market} reasonable value of the property, the district shall pay a penalty
27 of twenty-five percent of the ^{fair market} value of the property to the property owner.

28 8. Except as otherwise provided in section 32-15-32, if the court determines the taking of
29 the right of way was not necessary, the court shall order the district to pay a penalty
30 equal to fifty percent of the ^{fair market} reasonable value of the property ~~plus punitive damages to~~
31 the property owner. If the property owner's attorney's fees are less than ten percent of

Sixty-seventh
Legislative Assembly

- 1 ^{fair market}
 ~~the reasonable~~-value of the property, the court shall order the district to pay the
2 property owner's attorney's fees.
3 9. ^{for right of way}
 Notwithstanding any other provision of law, all property taken under this section must
4 maintain the same zoning restrictions and property classification in place before the
5 property was taken.