

## DAKOTA RESOURCE COUNCIL

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To the North Dakota Interim Committee on Energy Development and Transmission:

Dakota Resource Council (DRC) is grateful that the Legislative Management Committee has authorized the Committee on Energy Development and Transmission to study eminent domain laws.

In the spirit of collaboration, DRC offers the following suggestions for legislation to amend state eminent domain laws for the purpose of clarifying language adopted by the electorate in 2006 to amend the state's constitution, Article I, Section 16, and for the purpose of improving the rights of state landowners and their ability to seek redress of possible illegal practices in the taking of easements.

### I. Proposed Language to Clarify the Meaning of Article I, Section 16 of the State Constitution

The electorate added the following language to Article I, Section 16 of the State Constitution by popular vote in 2006:

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

Chapter 32 of the Century Code states that 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 (32-15-01)." Among the purposes for which eminent domain may be exercised are "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.... (32-15-02, 10)."

The chapter does not specifically define "common carrier," nor does it address a circumstance in which pipelines and related works merely pass through the state for the purpose of supplying benefits to inhabitants of other states, or other countries, in which the only possible benefits to North Dakota would be "economic development, including an increase in tax base, tax revenues, employment, or general economic health," which is precluded by the state Constitution as a basis for exercising eminent domain.

Therefore, DRC recommends the following amendments to Section 32 to implement Article I, Section 16 of the state Constitution:

curtail these practices only upon the determination of a court that at least five aggrieved landowners have been victims of such practices. There are two weaknesses of this law regarding protection of landowners' rights. First, landowners must absorb the initial costs of obtaining legal counsel, as well as all related court costs, which may provide a disincentive for them to defend their rights. Second, court proceedings may be delayed past the point at which the Commission has conferred the right of eminent domain, which limits the ability of the Commission to address wrongful practices.

DRC affirms the right of landowners to seek redress in court of wrongful practices in the taking of easements, but also suggests the following additional language in Century Code 49-22-16.1, which would allow aggrieved landowners to complain directly to the Public Service Commission for redress, and allow the Commission to act in a more timely manner to address wrongful practices in the taking of easements.

Add sections 6, 7, and 8 as follows:

"6. Alternatively, if at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, a request for an administrative hearing before the Public Service Commission may be brought."

"7. If the Commission finds that a person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the Commission shall declare the easements void and may order any compensation paid therefore returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory."

"8. For purposes of this section, any suggestion by a person or persons employed by a utility in acquiring or attempting to acquire an easement from at least five separate landowners that the utility can obtain such an easement through eminent domain, when in fact the utility has not yet acquired necessary authority from the Commission to exercise eminent domain, shall be considered misrepresentation, deception and fraud, and shall be grounds for declaring the easements void."