



Airport Association of North Dakota

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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 R', 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