

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.