

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.