



March 13, 2025

House Energy and Natural Resources

SB 2321

Representative Todd Porter, Chair

For the record, I am Stephanie Dassinger Engebretson, appearing on behalf of the North Dakota League of Cities (NDLC). I am the deputy director and attorney for the NDLC. The NDLC appears in opposition to SB 2321.

Cities do not use eminent domain proceedings often and strive to work with landowners to find solutions that work for everyone. However, most recently, a few cities have needed to use eminent domain to acquire property for flood protection projects. SB 2321 would make those projects more expensive and less likely for cities and landowners to work out an agreement without litigation.

In Section 2 of the bill, on page 1, line 18, the language "in its discretion" is struck. This language provides the court with discretion for awarding costs and attorney fees when an eminent domain case is litigated. It is the NDLC's understanding that in most cases, the court awards the defendant his or her attorney fees and costs. However, in some cases, if a defendant ends up receiving less than or equal to the amount offered in settlement negotiations, the court could decide not to award attorney fees and costs. Removing this language from the code removes any incentive a defendant has to work with a city to settle a case without a trial. The NDLC believes striking this language would significantly increase the number of eminent domain cases that go to trial, even when just and fair compensation has been offered.

In sections 1, 2, and 3 of the bill language stating, "the costs incurred for retaining an expert witness for use during the condemnation proceeding" is added to the costs that must be awarded in an eminent domain proceeding. That language does not take into account ensuring the expert witness costs are reasonable. In state court proceedings, the court refers to NDCC ch. 28-26 for awarding costs and disbursements to a defendant in an eminent domain proceeding. That chapter addresses the court evaluating the reasonableness of expert witness fees.

The NDLC worked on some language to address these concerns but the language was not adopted in the Senate. That proposed language is attached to my testimony.

The NDLC respectfully requests the committee either adopt the amendments or give the bill a Do Not Pass recommendation on SB 2321.

NDLC Proposed Amendment

SENATE BILL NO. 2321

1 A BILL for an Act to amend and reenact sections 32-15-28, 32-15-32, and 32-15-35 of the North
2 Dakota Century Code, relating to awarding costs and fees in eminent domain proceedings.

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

4 **SECTION 1. AMENDMENT.** Section 32-15-28 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-15-28. Public corporation bound by judgment.**

7 ~~In the event that any~~ If a property is being acquired by ~~any~~ a public corporation through
8 condemnation proceedings, ~~such~~ the public corporation shall be bound by the judgment
9 rendered ~~therein~~ in the condemnation proceedings and within six months after the entry of ~~such~~
10 a judgment shall pay ~~into~~ the court the full amount of the judgment on account of damages. If the
11 public corporation ~~shall dismiss~~ dismisses the action ~~prior to~~ before the entry of judgment, without
agreement of the defendant thereon, the court shall award to the defendant reasonable actual or
statutory costs and disbursements, as defined in chapter 28-26, or both, which ~~shall include~~ includes
reasonable attorney's fees ~~and the costs incurred for retaining an expert witness for use during the~~
~~condemnation proceeding.~~

12 **SECTION 2. AMENDMENT.** Section 32-15-32 of the North Dakota Century Code is
13 amended and reenacted as follows:

17 **32-15-32. Costs.**

18 1. The court may in its discretion award to the defendant reasonable actual or statutory
19 Costs and disbursements, as defined in chapter 28-26, or both, which ~~may include~~ includes
interest from the time of taking except interest on the amount of a deposit which is available for
withdrawal without prejudice to right of appeal, costs on appeal, ~~the costs incurred for retaining~~
~~an expert witness for use during the condemnation proceeding,~~ and reasonable attorney's fees
for all judicial proceedings.

1 2. If the defendant appeals and does not prevail, the costs on appeal may be taxed
2 against the defendant. ~~In all cases when~~ if a new trial ~~has been~~ is granted upon the
3 application of the defendant and the defendant ~~has failed upon such trial~~ fails to obtain
4 greater compensation than was allowed ~~the defendant upon~~ at the first trial, the costs
5 of ~~such~~ the new trial ~~shall~~ must be taxed against the defendant.

6 **SECTION 3. AMENDMENT.** Section 32-15-35 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **32-15-35. Eminent domain proceedings - Costs of defendant to be paid when**
9 **proceedings withdrawn or dismissed by party bringing the proceedings.**

10 ~~Whenever~~ if the state acting by and through its officers, departments, or agencies, or any
11 ~~municipality~~ or political subdivision of this state acting by and through its officers, departments,
12 or agencies, or any public utility, ~~corporation, limited liability company, association,~~ or other
13 entity which has been granted organization with the power of eminent domain ~~by the state,~~ shall
14 ~~commence~~ commences eminent domain proceedings against any land within ~~this~~ the state and
15 ~~thereafter~~ subsequently withdraws or ~~has such~~ the proceedings are dismissed without agreement
16 of the defendant, the state, ~~municipality, political subdivision, public utility, corporation, limited~~
17 ~~liability company, association, or entity~~ party commencing such eminent domain ~~the~~ proceedings
18 shall ~~be~~ is liable for and pay ~~to~~ to pay the owner of ~~such~~ the land all court costs and disbursements,
as defined in chapter 28-26, expenses, and fees, including reasonable attorney's fees, ~~and the~~
~~costs incurred for retaining an expert witness for use during the condemnation proceeding~~ as
shall be determined by the court in which the proceedings were filed.