

2025 SENATE ENERGY AND NATURAL RESOURCES

SB 2379

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2379
2/13/2025

Relating to the surveying process during eminent domain proceedings; and to declare an emergency.

10:30 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Landowner rights
- Environmental concerns
- Pipeline safety
- Inadequate compensation
- Eminent domain
- Project delays
- Potential increased costs
- Cultural resource survey requirements

10:30 a.m. Senator Boehm, District 33, introduced the bill and submitted testimony in favor #37614.

10:35 a.m. Troy Coons, Chairman of Northwest Landowners Association, testified in favor and submitted testimony #37616.

10:37 a.m. Derek Braaten, General Counsel, for ND NWLA, testified in favor.

10:48 a.m. Eric Volk, Executive Director of the ND Rural Water, testified in opposition and submitted testimony #37509.

10:56 a.m. Duane DeKrey, General Manager of the Garrison Diversion Conservancy District, testified in opposition and submitted testimony #37444.

10:58 a.m. Danni Quissell, Lobbyist 1267 for ND Water Users, testified on opposition.

10:59 a.m. Genny Dienstmann, Executive Director of NDACo, testified in opposition.

Additional written testimony:

Josey L. Milbradt submitted testimony in favor #37048.

Dennis Pathroff, Power Companies of North Dakota, submitted testimony in opposition #37399.

Mary Massad, President of the ND Water Users Association, submitted testimony in opposition #37418.

Kathrin Volochenko, Treasurer of the Nonpartisan League, submitted testimony in favor #37506.

11:01 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

Dear Members of the Senate Energy and Natural Resources Committee,

I am writing to express my support of SB2379. This bill introduces amendments that will enhance fairness of the eminent domain process. It requires written consent from the landowner or an order of the court before surveying can take place. This provision ensures that landowners are adequately informed and their rights are respected before any surveying activities commence. It strikes a balance between the needs of public projects and the protection of private property rights. It mandates that the survey and location of the condemner's project must be compatible with the greatest public benefit and the least private injury. This requirement ensures that public projects are planned and executed in a manner that maximizes benefits to the community while minimizing adverse impacts on individual landowners.

In conclusion, SB2379 ensures that landowners' rights are respected, public projects are planned with the community's best interests in mind, and critical infrastructure improvements can proceed without undue delay. I urge a DO PASS by the Senate Energy and Natural Resources Committee.

Thank you for your consideration.

Sincerely,

Josey Milbradt



Good morning, Chairman Patten and members of the Senate Energy and Natural Resources Committee,

The Power Companies of North Dakota (“PCND”) urges a “Do Not Pass” recommendation on SB 2379.

PCND is a coalition of the state’s leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

Senate Bill 2379 proposes changes to existing law relating to entry for survey and location purposes when land is required for public use. Existing law authorizes entry for survey and location of proposed facilities, but location must be in the manner which will be compatible with the greatest public benefit and the least private injury. This is sound public policy, because obtaining consent is unlikely when the condemning authority was forced to institute eminent domain proceedings. SB 2379 would require written consent from landowners or a court order before conducting necessary surveys. This would lead to delay and additional costs, jeopardizing projects necessary for public use and ultimately increasing costs to consumers of products for which public use is sought. For practical purposes, landowner consent is already obtained whenever possible.

Adding unnecessary regulatory hurdles could cause delays in critical energy infrastructure projects, increasing costs and impeding timely service to North Dakota residents. The current process balances landowner rights with the need for efficient project planning, making this proposed change unnecessary, burdensome and, in the case of requiring a court order, potentially very costly. Moreover, requiring a court order for entry to survey and locate would unnecessarily and unduly increase the workload for the court system.

Accordingly, PCND urges a “Do Not Pass” recommendation on SB 2379.

Thank you, Chairman Patten and committee members.



DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES

PO Box 2254, Bismarck, ND 58502-2254

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**Senate Energy and Natural Resources Committee
Hearing for SB 2379
February 13, 2025
Testimony of Mary Massad, President
North Dakota Water Users Association**

Chairman Patten and members of the Senate Energy and Natural Resources Committee, thank you for the opportunity to share our concerns with SB 2379. I am Mary Massad and I serve as the President of the North Dakota Water Users Association. The Water Users Association is the state-wide member organization dedicated to protecting, developing, and managing North Dakota's water resources. We have more than 150 members including local, statewide and regional organizations in North Dakota who have an active interest in water.

Many of our members are rural water systems who have shared concerns with how SB 2379 could impact the important work they do providing clean and reliable drinking water to rural residents and small communities across North Dakota. When survey work is done for siting rural water projects, the general practice is to provide notice via mail. This practice is working with no measurable issues.

If SB 2379 were to pass, rural water projects will take longer to complete at greater cost to both the state and local residents who pay for these projects. For these reasons we ask for a 'do not pass' on SB 2379.

Thank you for the opportunity to provide this testimony.

**Testimony by Duane DeKrey, General Manager
Garrison Diversion Conservancy District
Senate Energy and Natural Resources Committee
Senate Bill 2379
Bismarck, North Dakota – February 13, 2025**

Chairman Patten, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill (SB) 2379. My name is Duane DeKrey, General Manager of the Garrison Diversion Conservancy District (Garrison Diversion). While SB 2379 is a well-intended piece of legislation, I worry it will have unintentional impacts on implementing public infrastructure projects like the Red River Valley Water Supply Project (RRVWSP). State law already provides significant protection to landowners regarding surveys and requires surveys for public use projects be done with the least injury to property. If approved, SB 2379 would make public infrastructure projects more time consuming and put an additional cost burden on the already limited state and local resources.

Currently, if a governmental entity considers private property as a location for a public use, the governmental entity is allowed limited access in order to identify whether that property is actually suited for the public use being considered. When multiple project alignments or properties are being considered for a public use, it is necessary to conduct parcel examinations which may quickly eliminate the property as a location without much additional time and effort.

SB 2379 seeks to stop public entities from conducting even preliminary evaluations without obtaining written consent from every landowner potentially impacted and/or obtaining a court order. SB 2379 should be rejected for three reasons:

1. First and foremost, these preliminary surveys are important for project planning. The governmental intrusion is minimal, and these surveys will not take away private property rights or cause damage to property.

2. The requirement to obtain written consent in SB 2379 will result in project delays. Allowing preliminary access enables the governmental entity to make the best decision on a route or parcel. While landowners have private property rights to safeguard their interests and are entitled to notice, negotiation, and due process if any interests are to be taken, requiring a landowner signature for survey access would unduly delay projects. These delays become especially impactful when dealing with absentee landowners where even initial contact can be time consuming and expensive.

3. Court processes take time and are expensive. Demanding a government entity to seek a court order if written landowner approval isn't obtained before accessing properties will require significant expenditures of public funds and add months of delay to work through the court system. In large pipeline construction projects, there can be hundreds of parcels impacted. If the design stage requires court orders before parcels can be accessed as candidates for a public use, the court systems and judicial resources will be unduly clogged.

Communication with the public is a high priority for Garrison Diversion and, as a matter of routine, notifies landowners when surveyors will be on their properties and advises what types of surveys will be conducted. While we have experienced project opposition from time-to-time regarding this initial access, we have not had complaints or concerns raised by landowners after the survey observation was conducted. In addition, oftentimes these initial surveys provide valuable information greatly reducing the number

of landowners impacted in the future by quickly eliminating an alignment or route. In short, there is little disruption of the land, and we do our best to stay in close communication with the landowner regarding any need to access their property.

I urge you to reject SB 2379 as landowners are currently adequately protected.
Thank you for your consideration.

Greetings Mr./Madam Chair, members of the Committee, I'm Kathrin Volochenko of the **Nonpartisan League**

I request that this committee bring **SB 2379** to the floor with a "**Do Pass**" recommendation.

We as property owners cannot afford to allow any entity to just intrude on our private property and survey as they please without our permission. Landowners that would be possibly affected would need to be contacted before, and permission obtained, in order to proceed.

It is most heartening to see such that a bill has been introduced to augment all North Dakota property owners' rights.

Please don't misconstrue that I'm against energy infrastructure, it's just that the energy siting entities need to better work with all property owners so that all can benefit.

I do concur that this bill needs to be declared as an "*emergency measure*".

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Thanks for your time and attention



Eric Volk, Executive Director

ND Rural Water Systems Association

In Opposition of Senate Bill 2379

Senate Energy & Natural Resources Committee

February 13, 2025

Chairman Patten and members of the Senate Energy & Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in opposition of Senate Bill 2379, which seeks to limit governmental entities and political subdivisions of the state, like Rural Water Districts, the ability to conduct limited preliminary studies (e.g., pipeline alignment justification and a cultural resources surveys) without obtaining written consent from the landowner or by order of the court.

Rural/Regional Water development began in North Dakota in the late 60's and early 70's. Today, there are over 41,000 miles of Rural Water lines in every county of the state. Systems provide water to 268 of the state's 355 incorporated cities and have over 71,000 connections statewide. In total, they serve approximately 300,000 residents with affordable, ample, and quality water. Interacting with landowners is an essential process of Rural Water development. The Rural Water Industry fully understands the importance of the rights of the landowner and tries to balance those with project timing and keeping costs affordable for the end users (the landowner in most cases).

Section 32-15-06. Entry for making surveys, allows consultants in the planning phases of a project the ability to determine the correct route a pipeline will go. This gives further direction on what easements will be needed for construction. This section also allows for completing state and federal cultural resources requirements. These requirements always require a walk of the purposed route unless the project is within an existing structure or within an existing disturbed area like a city. A cultivated or planted crop field is not considered disturbed and requires a cultural resource survey. These surveys are time sensitive,

weather sensitive and performed following the North Dakota State Historical Preservation Office's "Guidelines Manual for Cultural Resource Inventory Projects". The SHPO Manual states:

"It is, therefore, the opinion of the ND SHPO that cultural resource inventories conducted in North Dakota when there is snow or heavy vegetation obscuring the surface of the study area and the ground is frozen are not adequate to either properly identify archaeological resources or evaluate the significance of resources which may be identified. Consequently, agencies which submit such reports to this office for review and comment pursuant to the above regulations will ordinarily be informed that adequate information has not been provided for this office to make an "informed and reasonable" evaluation of the proposed project's effects on significant resources and asked to provide such adequate information prior to resubmission of the materials for review and comment.

Rural Water Issues with SB 2379:

- Loss of a construction season
 - Projects will not be constructed until late in a biennium cycle and will not be completed within a single biennium (scenarios to follow).
- "Landowner" definition
 - Sounds singular; certainly is not. Most easements are husband/wife, multiple siblings, or trust with multiple signers. All would need to sign a notice to survey in addition to an easement.
- We also have concerns about the term "the person in charge" as Rural Water Systems and their contractors are entities, not individuals.
- Easement and Survey notice gathering time and expense
 - On average it takes 8 hours per easement. Times this by 1.5 or 2 if signed survey notices would be needed first.
- Cultural Resource Survey time and expense
 - \$1,200.00 per mile for survey and report for a 50-to-60-mile pipeline project. This will increase if reroutes need to be done and not surveyed on the fly (example included)
- Rural Water Systems normally contact the landowners by mail to let them know they will be in the area to conduct cultural surveys. This has worked in the past without much issue.

The following are two project scenarios. The first scenario illustrates how a project is normally completed and the second scenario (collection of 100% of easements) shows how this bill would adversely affect the completion of the same project.

Current Approach:

Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review – cover letter states when cultural surveys will be completed.	September 2025
Cultural Resource Onsite Surveys 2 to 3 Weeks – Onsite survey crews coordinate with the engineer on the fly to survey reroutes if cultural findings are discovered on the preliminary route.	October 2025
Cultural Surveys Complete – General avoidance areas known and reroutes already surveyed.	November 2025
Redraft Easements that Require Cultural Resource Avoidance	December 2025
Finalize and Work to Obtain Easements	November 2025-April 2026
Cultural Resource Report Drafting	November 2025-January 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	February 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	March 2026
Finalize Project Plans and have 90% of easements for Bid	April 2026
Apply for State Water Commission Construction Cost Share	Late April 2026
Collect Remaining 10% of Easements	April 2026-June 2026
Bid Project (21-day advertisement)	Late May 2026
State Water Commission Funding Meeting	Mid June 2026
Construction Start	Late July 2026

100% Easement Approach:

Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review and/or Send Survey Notice Letters for Signing	September 2025
Work to Obtain Easements or Survey Notice Letters	November 2025-April 2026
99% Plans – Plans are likely complete awaiting possible reroutes from cultural survey	April 2026
Cultural Resource Onsite Surveys Round 1 - 2 to 3 Weeks	May 2026
Additional Easements or New Landowner Survey Approval Letters - Based on routes needed during survey round 1	June 2026
Cultural Resource Onsite Surveys Round 2 - 1 Week	July 2026
Cultural Resource Report Drafting	July 2026-September 2026
Drafting/Redrafting Easements and/or Negotiating Easements with Landowners that would not sign until survey was complete	July 2026-September 2026
Finalize Plans from 99% to 100% (plans for been setting at 99% for 3-months awaiting surveys)	August 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	October 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	November 2026
Bid Project (100% Plans have been ready for 3 months)	December 2026
Apply for State Water Commission Construction Cost Share	Late December 2026
State Water Commission Funding Meeting	Mid February 2027
Construction Start	Spring 2027

The following is a perfect example of the cultural survey reroute made on the fly. The preliminary line was drafted to stay on the east side of the road through the pink box. Site surveys found some objects in the area and a reroute to the other side of the road was made on the fly. This reroute was 1,200 feet of a 30-mile project. It was a 5-minute call to discuss the need for a reroute to the west side of the road and 20 minutes to survey the reroute. If the system had first needed to contact the landowner (who was signed up to get water on the project at his farm a few miles north) they would have turned a 25-minute item into a few day, \$5,000 plus dollar expense by having to track the landowner down, get him to sign a new easement on the spot or a right to survey document. All while the archaeological survey crew is sitting and waiting to complete the job.



Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. We respectfully ask for a DO NOT Pass on SB 2379. Eric Volk, ericvolk@ndrw.org.

Chairman Patten and members of the Energy and natural resources committee

I would like to introduce SB2379 a measure that strengthens **property rights** while ensuring that public projects can proceed in a fair and transparent manner. To understand why this bill is necessary, we must take a brief look at North Dakota's history—specifically, the influence of Alexander McKenzie.

McKenzie, as many of you know, was a dominant political figure in North Dakota's early years, wielding immense power behind the scenes. He orchestrated land deals, controlled judicial appointments, and heavily influenced policies on land use and surveying. His influence helped shape North Dakota's eminent domain laws in ways that often-favored **powerful interests over private landowners**. The legacy of those laws is still felt today, as landowners often find themselves the losing end of government takings and development projects.

One area where this influence remains is in **surveying laws** related to eminent domain. Historically, those in charge of public projects could enter private land to conduct surveys without meaningful consent from landowners. This practice, rooted in a time when political bosses like McKenzie could use the law to their advantage, has persisted—leaving landowners with little say in who can access their property and when.

This bill seeks to correct that by requiring **written landowner consent or a court order before entry for surveys**. It ensures that the rights of property owners are respected while allowing necessary public projects to move forward in a structured and lawful manner. Additionally, it clarifies that landowners may seek damages only in cases of **negligence, wantonness, or malice**, preventing frivolous claims while still holding bad actors accountable.

~~Members of the committee, this is more than a procedural change, it is a step toward restoring balance between public interest and private property rights. I urge a Do Pass recommendation on this bill.~~

- **Land Entry for Surveying:**

- Previously, entities needing land for public use could enter and survey it.
- The amendment requires **written consent** from the landowner **or a court order** before entry.

- **Project Location Considerations:**

- The project must be **compatible with the greatest public benefit** and cause the **least private injury**.
- It remains subject to **existing legal provisions** under section 32-15-21.

- **Legal Protections for Landowners:**

- Entry for surveying **does not** create a legal claim unless the landowner suffers damage due to **negligence, wantonness, or malice** by the entity conducting the survey.

. Members of the committee, this is more than a procedural change, it is a **step toward restoring balance** between public interest and private property rights. I urge a **Do Pass** recommendation on this bill.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2379
Senate Energy and Natural Resources Committee
February 13, 2025

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2379 because it creates an orderly process for these surveys to be conducted if the condemning authority is not able to obtain the landowner's permission. Sending surveyors and others out onto property owned by a landowner who has said no is not only offensive, but just not an orderly way to obtain access by force.

This law allows companies to access our property to conduct their surveys, and some of these surveys are done under federal environmental laws with findings reported to the federal government. Some of them have significant soil borings. These can be intrusive surveys. Our understanding is that responsible developers do not object to obtaining a court order when they cannot obtain permission. We agree this is the best practice and ask for a DO PASS on SB 2379.

Thank you,

Troy Coons
Northwest Landowners Association

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2379
2/20/2025

Relating to the surveying process during eminent domain proceedings; and to declare an emergency.

9:18 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Emergency clause removal
- Agreement with industry representatives
- Opposition concerns
- Routing costs for rural water

9:18 a.m. Senator Boehm introduced proposed amendment and submitted testimony #38235.

9:20 a.m. Senator Beard moved amendment LC# 25.1345.01001.

9:20 a.m. Senator Van Oosting seconded.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	Y

Motion Passed 7-0-0.

9:25 a.m. Senator Kessel moved a Do Not Pass as amended.

9:25 a.m. Chairman Patten seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	Y
Senator Todd Beard	N
Senator Keith Boehm	N
Senator Mark Enget	N
Senator Justin Gerhardt	Y
Senator Desiree Van Oosting	N

Motion Failed 3-4-0.

9:26 a.m. Senator Boehm moved a Do Pass as amended.

9:27 a.m. Senator Van Oosting seconded the motion.

Senators	Vote
Senator Dale Patten	N
Senator Greg Kessel	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	N
Senator Desiree Van Oosting	Y

Motion Passed 4-3-0.

9:27 a.m. Senator Van Oosting will carry the bill.

9:27 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

CL 2/20
1041

SENATE BILL NO. 2379

Introduced by

Senators Boehm, Magrum, Wobbema

Representatives D. Johnston, Koppelman, Fisher

1 A BILL for an Act to amend and reenact section 32-15-06 of the North Dakota Century Code,
2 relating to the surveying process during eminent domain proceedings; ~~and to declare an~~
3 ~~emergency.~~

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

5 **SECTION 1. AMENDMENT.** Section 32-15-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-15-06. Entry for making surveys.**

8 In all cases ~~when~~in which land is required for public use, the person ~~or corporation~~, or the
9 person's ~~or corporation's~~ agents, in charge of ~~such~~the use may survey and locate the same, ~~but~~
10 ~~it~~land upon obtaining written consent from the landowner or by order of the court. The survey
11 and location of the condemner's project must be located in the manner which will be compatible
12 with the greatest public benefit and the least private injury and subject to ~~the provisions of~~
13 section 32-15-21. ~~Whoever is~~The person in charge of ~~such~~the public use may enter upon the
14 land and make examinations, surveys, and maps ~~thereof of the land~~, and ~~such~~the entry
15 ~~constitutes~~does not constitute a claim for relief in favor of the owner of the land except for
16 injuries resulting from negligence, wantonness, or malice.

17 ~~**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.~~

**REPORT OF STANDING COMMITTEE
SB 2379**

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS (25.1345.01001)** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2379 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.1345.01001
Title.

Prepared by the Legislative Council
staff for Senator Boehm
February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2379

Introduced by

Senators Boehm, Magrum, Wobbema

Representatives D. Johnston, Koppelman, Fisher

1 A BILL for an Act to amend and reenact section 32-15-06 of the North Dakota Century Code,
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11 and location of the condemner's project must be located in the manner which will be compatible
12 with the greatest public benefit and the least private injury and subject to ~~the provisions of~~
13 section 32-15-21. ~~Whoever is~~ The person in charge of ~~such~~ the public use may enter upon the
14 land and make examinations, surveys, and maps ~~thereof~~ of the land, and ~~such~~ the entry
15 ~~constitutes no~~ does not constitute a claim for relief in favor of the owner of the land except for
16 injuries resulting from negligence, wantonness, or malice.

17 ~~—SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.~~

2025 HOUSE ENERGY AND NATURAL RESOURCES

SB 2379

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2379

3/13/2025

Relating to the surveying process during eminent domain proceedings.
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4:52 p.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Invasive land survey
- Eminent domain proceedings
- Drones
- Communication

4:52 p.m. Senator Boehm introduced the bill and submitted testimony. #41399

4:59 p.m. Troy Coons, Chairman, Northwest Landowners Association, testified in favor and submitted testimony. #41401

5:04 p.m. Derrick Bratton, owner, Bratton Law, testified in favor.

5:20 p.m. Lanny Kenner, ND Resident, testified in favor and submitted testimony. #41215

5:21 p.m. Derrick Bratton, owner, Bratton Law, answered questions from the committee.

5:24 p.m. Erik Volk, executive director, ND Rural Water, testified in opposition and submitted testimony. #41340

5:33 p.m. Dennis Pathroff, lobbyist, Power Companies of ND, testified in opposition and submitted testimony. #41075

5:34 p.m. Duane DeKrey, General Manager, Garrison Diversion Conservancy District, testified in opposition and submitted testimony. #41117

5:40 p.m. Sindhuja S Pillai- Grinolds, Division Director, Department of Water Resources, testified in opposition and submitted testimony. #41105

5:42 p.m. Dani Quissell, executive vice president, ND Water Users Association, testified in opposition and submitted testimony. #41175

Additional written testimony:

Susan Long, ND resident, submitted testimony in favor. #40666

Sandra Rupp, ND resident, submitted testimony in favor. #40145

Steve Rupp, ND resident, submitted testimony in favor. #40519

Gordon Greenstein, ND resident, submitted testimony in favor. #41159

Lucas Wald, ND resident, submitted testimony in favor. #41197

Kurt Swanson, ND resident, submitted testimony in favor. #41302

Sabrina Hildenbrand, ND resident, submitted testimony in favor. #41331

Michael Connelly, ND resident, submitted testimony in favor. #41196

Jonathan Fortner, VP of Government Relations, Lignite Energy Council, submitted testimony in opposition. #41238

Chris Barke, landowner relations and interim executive director, Western Area Water Supply Authority, submitted testimony in opposition. #40954

Casey Einrem, senior assistant county engineer, ND Association of County Engineers for Burleigh County, submitted testimony in opposition. #41152

5:43 p.m. Chairman Porter adjourned the meeting.

Addison Randazzo for Leah Kuball, Committee Clerk

Dear Energy and Natural Resource Committee

SB2379 requires landowner permission or court order for pre-condemnation access. Considering, every time we turn around there are more and more take aways from land owner's rights, let give this SB2379 a DO PASS.

North Dakota footprint is Agriculture and that should remain. In the words of Sarah Vogel

Don't gamble with ND's farmland "By expanding who can legally own farmland, this change creates an open door for foreign governments, like China, or billion-dollar investment funds to acquire North Dakota farmland," writes Sarah Vogel, who served as ag commissioner from 1988 to 1996.

Therefore, I urge you to Support SB2379 with a DO PASS recommendation

Respectfully,

Sandra J. Rupp
District 28
Edgeley ND

Support SB2379

To members of the Energy and Natural Resources Committee,

I respectfully ask that you vote to pass SB2379 for the sake of the rights of the individual landowners. With the passage of this bill, at least the entities that are seeking to enter private lands for the sake of surveying, would need to at least have permission first, from the landowner. Draw a parallel by considering your own homes. Some morning a person shows up at your front door and walks in and starts surveying your home and lawns. They tell you they are going to have a building project that goes right through your property. Where are your rights to ask if they have permission first? Without this bill passing, they can bully their way to wherever they wish and push projects through without the rights of the individual landowner being considered.

Thank you for your consideration

Steve Rupp

District 28

Chair and Members of the Committee,

As a North Dakota landowner, I am writing in support of SB 2379. This bill restores a critical layer of protection for landowners by ensuring that access to private land is not automatic, but instead, subject to basic legal safeguards. It upholds the principles of property rights and due process, while still allowing necessary public projects to move forward through proper legal channels.

Requiring consent or a court order promotes accountability, minimizes unnecessary intrusion, and helps ensure that we, the landowners, are treated with fairness and respect from the very beginning of any potential eminent domain proceedings.

Please protect landowner's rights. I respectfully urge a "Do Pass" recommendation on SB 2379.

I appreciate your time and consideration.

Susan R. Long

Berlin, ND



WESTERN AREA

WATER SUPPLY AUTHORITY

RE: In Oppositin of Senate Bill 2379
March 13, 2025

Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Chris Barke. I am the interim executive director of Western Area Water Supply (WAWSA) and also serve as easement and project coordinator. WAWSA has worked tirelessly to ensure Northwest North Dakota has access to affordable, abundant, and quality water. I am submitting testimony today in opposition of this bill as it currently stands and would like to see, at the very least, the amendments added that have been proposed by the North Dakota Rural Water Systems Association. This bill would greatly increase the work load and time put into a rural water distribution project before construction.

WAWSA makes sufficient efforts to notify landowners of preliminary studies and surveys that will be taking place throughout the project areas. If WAWSA or other political subdivisions are required to obtain written consent from landowners, or an order of the court, it could greatly increase the time it takes for a project to be completed. WAWSA and others could potentially risk an entire construction season due to a handful of hold outs or landowners who do not wish to participate in the project.

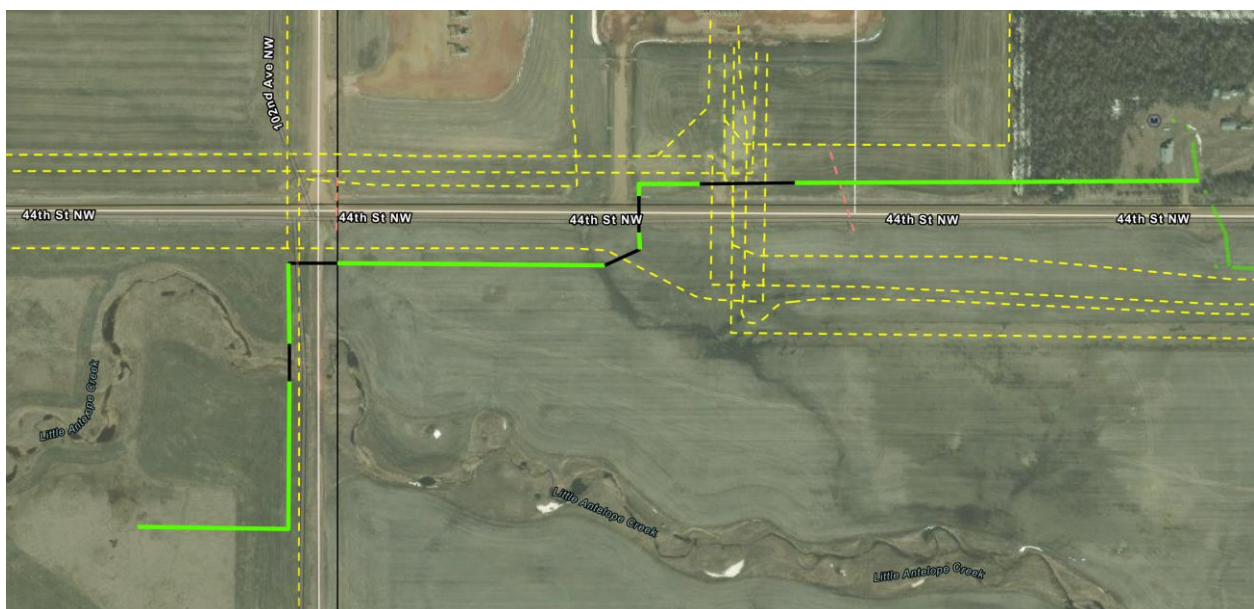
Right now WAWSA has about an 8-12 month pre-construction process. Where line work is finalized, surveys are conducted, easements are acquired, and route changes can be made. Pipeline routing can change for a number of different reasons whether it be difficult landowners, other pipelines or utilities, or archeology challenges. Western North Dakota is a very difficult area to navigate landowners and other pipelines. WAWSA has felt the "pipeline fatigue" from landowners and users and it has only increased the difficulty in gathering signatures for easements or notices. Having to acquire written notice before entering a property would only increase the fatigue on these landowners and make easement acquisition more difficult.



WESTERN AREA WATER SUPPLY AUTHORITY

For instance, I am working on a number of different projects with unique challenges. One expansion project East of Williston is only thirty miles of pipeline, but we cross one-hundred fifty different individuals. An expansion project in Northeast McKenzie County is flooded with oil and gas pipelines and easement acquisition is difficult due to the number of encumbrances these landowners have had to deal with. Both of these projects are set to begin construction the summer of 2025 and are on track to do so. Gathering signature for survey would add an additional four to six months of time to these projects and have the potential to miss the entire construction season of 2025 due to easement acquisition being pushed back that much further.

Below is an example of a parcel with a large amount of pipelines in a concentrated area and how WAWSA has had to navigate these lines. If this route were needing to be changed due to an unmarked line or a line we were unaware of prior to one-call, we could potentially have to put that segment on hold due to needing written consent for survey on a neighboring parcel, the time for a cultural survey to take place, and a new easement to be signed.





WESTERN AREA
WATER SUPPLY AUTHORITY

Thank you for allowing me to provide testimony on behalf of Western Area Water Supply Authority, we considerately request a DO NOT Pass on SB 2379.

Respectfully,

Chris Barke

Chris Barke

Western Area Water Supply Authority



Good afternoon, Chairman Porter and members of the House Energy and Natural Resources Committee,

The Power Companies of North Dakota ("PCND") urges a "Do Not Pass" recommendation on SB 2379.

PCND is a coalition of the state's leading shareholder-owned gas and electric utilities. Our members include MDU Resources Group, Xcel Energy, Otter Tail Power Company, and ALLETE. Together, PCND members serve over 427,000 North Dakota customers, employ over 1,200 North Dakotans, and manage significant power generation and transmission infrastructure across our state.

Senate Bill 2379 proposes changes to existing law relating to entry for survey and location purposes when land is required for public use. Existing law authorizes entry for survey and location of proposed facilities, but location must be in the manner which will be compatible with the greatest public benefit and the least private injury. This is sound public policy, because the prospect of obtaining voluntary consent seems unlikely when the condemning authority is poised to institute eminent domain proceedings. SB 2379 would require written consent from landowners or a court order before conducting necessary surveys. This would lead to delay and additional costs, jeopardizing projects necessary for public use and ultimately increasing costs to consumers of products for which public use is sought.

For practical purposes, landowner consent is already obtained whenever possible.

Adding unnecessary regulatory hurdles could cause delays in critical energy infrastructure projects, increasing costs and impeding timely service to North Dakota residents. The current process balances landowner rights with the need for efficient project planning, making this proposed change unnecessary, burdensome and, in the case of requiring a court order, potentially very costly. Moreover, requiring a court order for entry to survey and locate would unnecessarily and unduly increase workload for the court system.

Accordingly, PCND urges a "Do Not Pass" recommendation on SB 2379.

Thank you, Chairman Porter and committee members.



Water Resources

Testimony in Opposition of

SB 2379

House Energy and Natural Resources Committee

March 13, 2025

TESTIMONY OF

Sindhuja S.Pillai-Grinolds, Water Development Division Director

Chairman Porter, and members of the House Energy and Natural Resources Committee, I am Sindhuja S.Pillai-Grinolds, the Water Development Division Director of the Department of Water Resources. I'm here today to provide testimony in opposition to the First Engrossment of SB 2379.

The Department of Water Resources (DWR) is responsible for the construction of the Southwest Pipeline Project, construction and operation of the Northwest Area Water Supply Project, and construction and operation of the Devils Lake Outlets. As part of these critical projects, DWR has installed over 5,500 miles of pipeline to support water supply and flood control in the state.

In order to ensure the proper siting and design of these pipeline routes, preliminary surveys on private property are necessary. These surveys are crucial for assessing cultural resources and determining the suitability of the land for pipeline installation. The process of obtaining written consent from landowners or securing a court order to enter private land as required by Engrossed SB 2379 presents significant challenges and could cause extensive delays to the projects.

I want to emphasize that the DWR team, along with our consulting team, fully respects landowner rights. We ensure that no physical damage is caused during the preliminary alignment surveys. In cases where more intrusive activities, such as geotechnical drilling, are required, we seek consent from the landowners before proceeding.

We understand and value the trust of the landowners, and it is our goal to complete these surveys in a manner that minimizes any disruption while ensuring the success of these important infrastructure projects.

We understand that an amendment to SB 2379 may be considered by the House Energy and Natural Resources Committee. This amendment would change the bill to require a landowner notification prior to surveying. DWR would be supportive of this amendment.

Thank you for the opportunity to testify, and I'm happy to answer any questions.

**Testimony by Duane DeKrey, General Manager
Garrison Diversion Conservancy District
House Energy and Natural Resources Committee
Senate Bill 2379
Bismarck, North Dakota – March 13, 2025**

Chairman Porter, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill (SB) 2379. My name is Duane DeKrey, General Manager of the Garrison Diversion Conservancy District (Garrison Diversion). While SB 2379 is a well-intended piece of legislation, I worry it will have unintentional impacts on implementing public infrastructure projects like the Red River Valley Water Supply Project (RRVWSP). State law already provides significant protection to landowners regarding surveys and requires surveys for public use projects be done with the least injury to property. If approved, SB 2379 would make public infrastructure projects more time consuming and put an additional cost burden on the already limited state and local resources.

Currently, if a governmental entity considers private property as a location for a public use, the governmental entity is allowed limited access in order to identify whether that property is actually suited for the public use being considered. When multiple project alignments or properties are being considered for a public use, it is necessary to conduct parcel examinations which may quickly eliminate the property as a location without much additional time and effort.

SB 2379 seeks to stop public entities from conducting even preliminary evaluations without obtaining written consent from every landowner potentially impacted and/or obtaining a court order. SB 2379 should be rejected for three reasons:

1. First and foremost, these preliminary surveys are important for project planning. The governmental intrusion is minimal, and these surveys will not take away private property rights or cause damage to property.

2. The requirement to obtain written consent in SB 2379 will result in project delays. Allowing preliminary access enables the governmental entity to make the best decision on a route or parcel. While landowners have private property rights to safeguard their interests and are entitled to notice, negotiation, and due process if any interests are to be taken, requiring a landowner signature for survey access would unduly delay projects. These delays become especially impactful when dealing with absentee landowners where even initial contact can be time consuming and expensive.

3. Court processes take time and are expensive. Demanding a government entity to seek a court order if written landowner approval isn't obtained before accessing properties will require significant expenditures of public funds and add months of delay to work through the court system. In large pipeline construction projects, there can be hundreds of parcels impacted. If the design stage requires court orders before parcels can be accessed as candidates for a public use, the court systems and judicial resources will be unduly clogged.

Communication with the public is a high priority for Garrison Diversion and, as a matter of routine, notifies landowners when surveyors will be on their properties and advises what types of surveys will be conducted. While we have experienced project opposition from time-to-time regarding this initial access, we have not had complaints or concerns raised by landowners after the survey observation was conducted. In addition, oftentimes these initial surveys provide valuable information greatly reducing the number

of landowners impacted in the future by quickly eliminating an alignment or route. In short, there is little disruption of the land, and we do our best to stay in close communication with the landowner regarding any need to access their property.

I urge you to reject SB 2379 as landowners are currently adequately protected.
Thank you for your consideration.



Testimony Prepared for the
House Energy and Natural Resources Committee
March 13, 2025

By: Casey Einrem, Burleigh County Senior Assistant County Engineer & NDACE Legislative Committee

RE: Opposition for SB 2379 – Relating to the surveying process during eminent domain proceedings

Chairman Porter and members of the House Energy and Natural Resources Committee, thank you for the opportunity to provide testimony on SB 2379. I am Casey Einrem, the Burleigh County Senior Assistant Engineer, and I also serve as a member of the Legislative Committee for the ND Association of County Engineers (NDACE).

Although eminent domain is not often used for county road projects, we do want to provide some information for consideration. We sympathize with the citizens of North Dakota that have or will go through eminent domain proceedings. Eminent Domain is a process that can be frustrating to many and it is a choice of last resort after all other options have been exhausted.

At the beginning stages of roadway projects, counties may not know if a survey to gather information has the potential for eminent domain proceedings. Due to this, every survey would need to be treated as if eminent domain proceedings might occur with this bill. During the design of roadways, counties try to minimize any impacts to adjacent landowners. It is not always possible to avoid building roadways into adjacent property due to design requirements or requirements in the law. Also, surveys are not always conducted at advantageous times. A good example occurred this year in my county. A new gas station was proposed at a busy intersection in Burleigh County (outside of the City of Bismarck) and after a Traffic Operations Report, it was determined that turn lanes would be required at this intersection. The proposed plans and report were presented in October of 2024. If 30 days' notice was required prior to survey, because we didn't know if adjacent landowners would be impacted by the new roadway footprint prior to design, the survey would have occurred in later November. This winter was nice and we could have done the survey, but this winter is not a typical one. In a typical winter, with the proposed amendment, the survey would have needed to be delayed until Spring to obtain accurate ground information for design. This would have brought delays to the roadway project while the construction of a gas station would have possible impacts to the traveling public.

The proposed amendment is unclear in determining if an item was missed in the initial survey, would a new survey notice need to be sent to obtain the item that was missed or would it still be covered under the initial notice while still being within the 90 days?

The proposed residential address in line 14 of the amendment seems unclear if it means the business address in North Dakota and not a PO Box, or the personal address of the person in charge of the public use. If it means the personal address, I can only speak for myself and NDACE on this point. I will not include my personal address due to the number of threats received at numerous public input meetings and public hearings I have done over the years. I have had citizens call my home number enough times that we have an unlisted phone number. I have had citizens come to my home, with my family present, to make their very strong opinions known about projects they did not like. I do not feel it is appropriate to make threats to my family because they disagree with a project. We request the amendment would



include a physical business address within the state of North Dakota, where citizens can address their concerns in a business environment.

Chairman Porter and Committee Members, we understand this committee is trying to strike a balance in the best way possible while providing protection to the public. We also recognize this is a difficult job with competing viewpoints and appreciate your time and consideration of our concerns.

SB 2379

House Energy and Natural Resources

Chairman Porter and Committee Members

I strongly urge a Do Pass on SB 2379 because the key changes clarify the conditions under which surveyors can enter private land, specifically requiring written consent from the landowner or a court order before conducting surveys. The bill maintains the existing principle that survey activities must be conducted in a manner that provides the greatest public benefit while causing the least private injury.

Thank You, Gordon Greenstein

US Navy (Veteran)

US Army-NDNG (Retired)



DEDICATED TO PROTECTING, DEVELOPING, AND MANAGING NORTH DAKOTA'S WATER RESOURCES

PO Box 2254, Bismarck, ND 58502-2254

701-223-4615 • 701-223-4645 (Fax)

**House Energy and Natural Resources Committee
Hearing for SB 2379
March 13, 2025
Testimony of Dani Quissell, Executive Vice President
North Dakota Water Users Association**

Chairman Porter and members of the House Energy and Natural Resources Committee, thank you for the opportunity to share our concerns with SB 2379. I am Dani Quissell and I serve as the Executive Vice President of the North Dakota Water Users Association. The Water Users Association is the state-wide member organization dedicated to protecting, developing, and managing North Dakota's water resources. We have more than 150 members including local, statewide and regional organizations in North Dakota who have an active interest in water.

Many of our members are rural water systems and other water projects who have shared concerns with how SB 2379 could impact the important work they do providing clean and reliable drinking water to rural residents and small communities across North Dakota. When survey work is done for siting rural water projects, the general practice is to provide notice via mail. This practice is working with no measurable issues. If SB 2379 were to pass as currently drafted, rural water projects will take longer to complete at greater cost to both the state and local residents who pay for these projects.

We believe if the legislature would like to add this requirement, it's more appropriate to do so only for those instances where eminent domain is used and only after the eminent domain process has commenced.

Without that change, we would respectfully ask for a do not pass recommendation. Thank you for the opportunity to provide this testimony. I would be happy to stand for any questions.

House Energy and Natural Resources Committee

I recommend a DO PASS on SB 2379

How is it that we have evolved to considering eminent domain for private uses. This has been reserved for use by the public. I would add that the nature of big projects that benefit all citizens is narrowing and thus here we are discussing what is an ethical use of the power to wield eminent domain.

In our case, we are a great nation and state with or without most projects considered and thus, eminent domain should not even be a consideration on projects. Right now, with all right-of-way and easements being in road ditches, why not change laws and run them under the county roads. Often counties are strapped for money and run pipes under roads, 20 miles from any major populations because in the case of a CO2 disaster it is easier to run down a plowed road than a field covered in 4 ft snow. If there is ever a leak, then the owner of a pipeline is responsible for repair and loss.

Also, in North Dakota, the population is one of our greatest assets with only having 4.7 people per square mile. Bismarck has just 2,000/sq, Lincoln 2,500, city limits to 4 miles out drops to 189/sq, 4 to 20 miles is nearly 26/sq and at 20 miles out it drops to 2.5/sq. Using Bismarck as an example: If we have 100 emergency resources and during peak times avg 38 calls in que, and as a regional support we are called to address 30 in trouble, we still have some resources to send out where appropriate. But if we have a thousand people down, 100 of our resources are addressing needs with 900 in que with no help until resources are available. With those scenarios we either pray it never happens, or we have to make a very expensive decision and become more robust in the area of emergency resources.

Why do we have to walk down the road of making things so hard when we have options to change some laws and run the pipes under roads for emergency accessibility to not have to go the way of eminent domain. Also respect the citizen dollar more by making sure we do not have to expand emergency response beyond what is absolutely necessary for a low probability accident. Maybe the project planners are right and their efforts are the best thing since Independence Day, but if we the people through trusting our legislators can still accomplish things outside of strong arming citizens out of their property regardless of compensation....why not make it happen?

I am well aware of the pressure from the Democrat left to handcuff our states energy resources and that is why I am not taking an absolutely not position of projects. I am asking

for a little grace when we engage one another and not using emanant domain when it is not the resourceful answer for the outcomes of our dynamic populations and perspectives.

Thank you for considering a DO PASS recommendation on SB 2379.

Mike Connelly

Bismarck Citizen

701-400-1839

{All comments above are my personal opinion and DO NOT represent an official position of any entity or organization}

Chairman and Members of the committee,

As a North Dakota landowner, I am writing in support of SB2379. This bill is necessary for the protection of access to private property. This bill will continue to uphold the basic principles and protections of private property owners and still will allow if agreed upon by property owner or through legal proceedings the allowance of public projects to move forward. This will insure our property rights continue to be protected from unjust, and unlawful infringement on private property.

Respectfully,
Lucas Wald
Edgeley ND
District 28

Lanny Kenner
District 7

Chairman Porter and committee members,
I am requesting YES votes on SB2379.

SB 2379 would require a landowner's signature to come on his land to survey or by a court order.

Even though this would take extra time for all the permissions, it would be respectful to the landowners. Most landowners would have no problem signing off for projects like water projects or any other beneficial projects for the community.

Please show the landowners respect by voting YES on SB 2379.

Thank you, Lanny Kenner



March 13, 2025

Chairman Porter and House Energy and Natural Resources Committee Members,

Thank you for the opportunity to testify on behalf of the Lignite Energy Council in opposition to SB 2379. The current framework provides an effective balance between landowner rights and the need for efficient project planning. Under existing law, authorized entities may enter land to conduct necessary surveys while ensuring the location of proposed facilities maximizes public benefit and minimizes private injury. This is sound public policy, as it respects landowner rights while allowing infrastructure development to proceed efficiently.

This bill, however, would require written landowner consent or a court order before conducting surveys, leading to significant project delays, increased costs, and unnecessary burdens on developers and the courts. Critical infrastructure projects—such as energy transmission lines, pipelines, and utility expansions—rely on timely survey work to determine feasibility, environmental impact, and engineering needs. If landowners deny access and developers must seek court orders, projects could face extended legal battles, adding weeks or months of delays. This disrupts construction schedules, increases costs, and creates uncertainty for investors and planners.

Infrastructure projects often span multiple land parcels. If even a few landowners refuse access, developers would need to seek multiple court orders, compounding legal expenses and administrative burdens. These delays could push projects beyond planned timelines, impacting supply chains, workforce scheduling, and seasonal construction windows—ultimately increasing costs for consumers. Moreover, requiring court orders would strain the judicial system, diverting resources from other pressing legal matters.

For practical purposes, developers already seek landowner consent whenever possible. The current law strikes a reasonable balance between protecting property rights and ensuring efficient project development. Adding unnecessary regulatory hurdles would slow infrastructure progress, raise costs, and discourage investment in North Dakota's energy and transportation sectors. For these reasons, we urge the committee to oppose SB 2379, with a "Do Not Pass" recommendation and maintain the effective balance that already exists in the law.

Sincerely,
Jonathan Fortner
Vice President of Government Relations and External Affairs
Lignite Energy Council

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

📞 701.258.7117

🌐 www.lignite.com

@ LEC@lignite.com

House Energy and Natural Resources Committee

Testimony on SB 2379 (IN FAVOR)

Kurt Swenson, Beulah, ND District 33

Chairman Porter, Vice Chairman Anderson and members of the House Energy and Natural Resources Committee, my name is Kurt Swenson from Beulah.

In our bundle of property rights, the **right to exclude** is one of the most treasured. I am submitting this testimony in favor of SB 2379.

My primary concern is non-governmental corporations feeling they have free rights of access to my property without asking for my consent. I should be asked for permission before stepping on my land as a simple courtesy. I may have guard dogs, livestock, protected wildlife or rare plant species I do not want disturbed. If I am not able to be reached, a court should authorize their physical invasion of my property.

Non-governmental corporations do not automatically have the constitutional right of access for all projects and while they may believe the project under consideration meets our constitutional threshold of public use, an independent court should at least agree with their opinion prior to entry if I decline access or am not able to be reached.

I respectfully ask you to vote DO PASS vote on SB 2379.

Sincerely,

Kurt Swenson

Chairman and Members of the Committee,

As a ND landowner, I'm writing in support of SB2379. SB2379 will protect our rights as private property owners from private corporations from doing what they want on our land without our permission. The landowners should be respected and deserve to be treated fairly.

I respectfully urge a "Do Pass" on SB2379.

Sabrina Hildenbrand

Monango, ND

District 28



Eric Volk, Executive Director

ND Rural Water Systems Association

In Opposition of Senate Bill 2379

House Energy & Natural Resources Committee

March 13, 2025

Chairman Porter and members of the House Energy & Natural Resources Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today, I am submitting testimony in opposition of Senate Bill 2379, which seeks to limit governmental entities and political subdivisions of the state, like Rural Water Districts, the ability to conduct limited preliminary (pre-condemnation/pre-eminent domain) studies (e.g., pipeline alignment justification and cultural resources surveys) without obtaining written consent from the landowner or by order of the court.

Rural/Regional Water development began in North Dakota in the late 60's and early 70's. Today, there are over 41,000 miles of Rural Water lines in every county of the state. Systems provide water to 268 of the state's 355 incorporated cities and have over 71,000 connections statewide. In total, they serve approximately 300,000 residents with affordable, ample, and quality water. Interacting with landowners is an essential process of Rural Water development. The Rural Water Industry fully understands the importance of the rights of the landowner and tries to balance those with project timing and keeping costs affordable for the end users (the landowner in most cases).

The North Dakota Supreme Court has ruled entry and examination under Section 32-15-06 is a preliminary process and not part of an eminent domain proceeding. The person entering the land is not required to file an eminent domain summons and complaint or prove eminent domain of the land to be examined is proper or necessary at this stage of the proceedings (Legislative Council, July 2017). Section 32-15-06 allows consultants in the planning phases of a project the ability to determine the correct route a pipeline will go. This gives further direction on what easements will be needed for construction. This

section also allows for completing state and federal cultural resources requirements. These requirements always require a walk of the purposed route unless the project is within an existing structure or within an existing disturbed area like a city. A cultivated or planted crop field is not considered disturbed and requires a cultural resource survey. These surveys are time sensitive, weather sensitive and performed following the North Dakota State Historical Preservation Office's "Guidelines Manual for Cultural Resource Inventory Projects". The SHPO Manual states:

"It is, therefore, the opinion of the ND SHPO that cultural resource inventories conducted in North Dakota when there is snow or heavy vegetation obscuring the surface of the study area and the ground is frozen are not adequate to either properly identify archaeological resources or evaluate the significance of resources which may be identified. Consequently, agencies which submit such reports to this office for review and comment pursuant to the above regulations will ordinarily be informed that adequate information has not been provided for this office to make an "informed and reasonable" evaluation of the proposed project's effects on significant resources and asked to provide such adequate information prior to resubmission of the materials for review and comment.

Rural Water Issues with SB 2379:

- Loss of a construction season
 - Projects will not be constructed until late in a biennium cycle and will not be completed within a single biennium (scenarios to follow).
- "Landowner" definition
 - Sounds singular; certainly is not. Most easements are husband/wife, multiple siblings, or trust with multiple signers. All would need to sign a notice to survey in addition to an easement.
- Easement and Survey notice gathering time and expense
 - On average it takes 8 hours per easement. Times this by 1.5 or 2 if signed survey notices would be needed first.
- Cultural Resource Survey time and expense
 - \$1,200.00 per mile for survey and report for a 50-to-60-mile pipeline project. This will increase if reroutes need to be done and not surveyed on the fly (example included)
- Rural Water Systems normally contact the landowners by phone or in person to let them know they will be in the area to conduct cultural surveys. This has worked in the past without much issue.

The following are two project scenarios. The first scenario illustrates how a project is normally completed and the second scenario (collection of 100% of easements) shows how this bill would adversely affect the completion of the same project.

Current Approach:

Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review – cover letter states when cultural surveys will be completed.	September 2025
Cultural Resource Onsite Surveys 2 to 3 Weeks – Onsite survey crews coordinate with the engineer on the fly to survey reroutes if cultural findings are discovered on the preliminary route.	October 2025
Cultural Surveys Complete – General avoidance areas known and reroutes already surveyed.	November 2025
Redraft Easements that Require Cultural Resource Avoidance	December 2025
Finalize and Work to Obtain Easements	November 2025-April 2026
Cultural Resource Report Drafting	November 2025-January 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	February 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	March 2026
Finalize Project Plans and have 90% of easements for Bid	April 2026
Apply for State Water Commission Construction Cost Share	Late April 2026
Collect Remaining 10% of Easements	April 2026-June 2026
Bid Project (21-day advertisement)	Late May 2026
State Water Commission Funding Meeting	Mid June 2026
Construction Start	Late July 2026

100% Easement Approach:

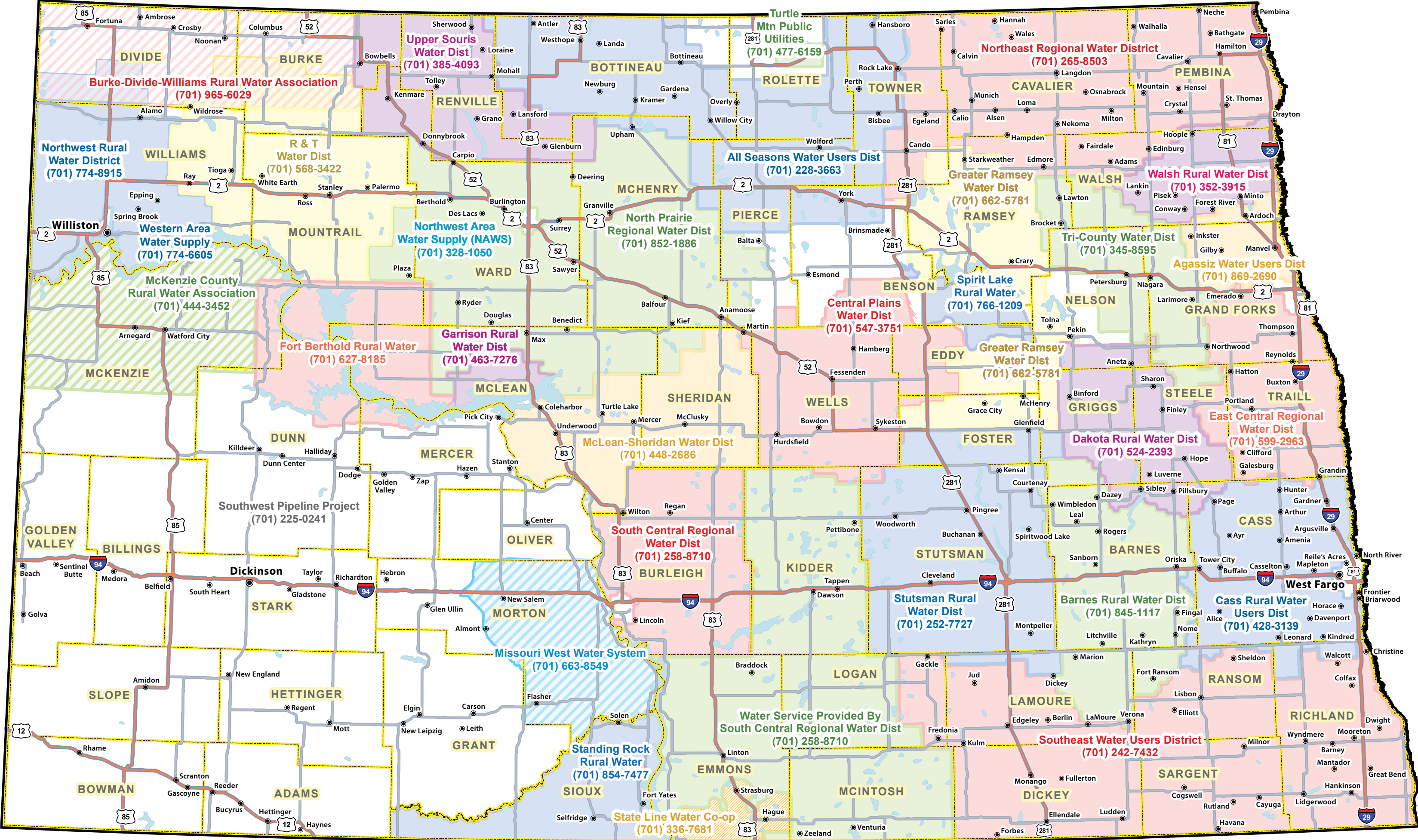
Obtain Preconstruction Funding through State Water Commission	June 2025
Design Preliminary Routing	July 2025-August 2025
Draft and Send Easements for Landowner Review and/or Send Survey Notice Letters for Signing	September 2025
Work to Obtain Easements or Survey Notice Letters	November 2025-April 2026
99% Plans – Plans are likely complete awaiting possible reroutes from cultural survey	April 2026
Cultural Resource Onsite Surveys Round 1 - 2 to 3 Weeks	May 2026
Additional Easements or New Landowner Survey Approval Letters - Based on routes needed during survey round 1	June 2026
Cultural Resource Onsite Surveys Round 2 - 1 Week	July 2026
Cultural Resource Report Drafting	July 2026-September 2026
Drafting/Redrafting Easements and/or Negotiating Easements with Landowners that would not sign until survey was complete	July 2026-September 2026
Finalize Plans from 99% to 100% (plans for been setting at 99% for 3-months awaiting surveys)	August 2026
ND SHPO Review & Concurrence of Report (minimum 30-days)	October 2026
ND Dept. of Environmental Quality (DEQ) Review of Project Facility Plan and 30-Day Public Notice of Finding of No Significant Impact	November 2026
Bid Project (100% Plans have been ready for 3 months)	December 2026
Apply for State Water Commission Construction Cost Share	Late December 2026
State Water Commission Funding Meeting	Mid February 2027
Construction Start	Spring 2027

The following is a perfect example of the cultural survey reroute made on the fly. The preliminary line was drafted to stay on the east side of the road through the pink box. Site surveys found some objects in the area and a reroute to the other side of the road was made on the fly. This reroute was 1,200 feet of a 30-mile project. It was a 5-minute call to discuss the need for a reroute to the west side of the road and 20 minutes to survey the reroute. If the system had first needed to contact the landowner (who was signed up to get water on the project at his farm a few miles north) they would have turned a 25-minute item into a few day, \$5,000 plus dollar expense by having to track the landowner down, get him to sign a new easement on the spot or a right to survey document. All while the archaeological survey crew is sitting and waiting to complete the job.



Thank you for giving me the opportunity to provide testimony on behalf of the members of the NDRWSA. We respectfully ask for a DO NOT Pass on SB 2379. Eric Volk, ericvolk@ndrw.org.

Incorporated Cities on a Rural or Regional System





North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Keith Boehm

District 33
2752 34th Street
Mandan, ND 58554-8128

C: 701-425-1520

kboehm@ndlegis.gov

COMMITTEES:
Industry and Business
Energy and Natural Resources

03-13-25

Chairman Porter and members of the Energy and Natural Resources committee.

I am Keith Boehm, Senator from District #33. I am introducing SB 2379. This bill is to amend and reenact Section 32-15-06 of the North Dakota Century Code, clarifying the surveying process in eminent domain proceedings. The bill allows a person, corporation, or their agents to enter private land to survey and locate areas needed for public use, provided they have the landowner's written consent or a court order. The survey must prioritize public benefit while minimizing private harm. The landowner cannot seek legal action for the entry itself, except in cases where negligence, recklessness, or malicious intent caused damage.

To understand why this bill is necessary, we must take a brief look at North Dakota's history specifically, the influence of Alexander McKenzie.

McKenzie, as many of you know, was a dominant political figure in North Dakota's early years, wielding immense power behind the scenes. He orchestrated land deals, controlled judicial appointments, and heavily influenced policies on land use and surveying. His influence helped shape North Dakota's eminent domain laws in ways that often-favored **powerful interests over private landowners**. The legacy of those laws is still felt today, as landowners often find themselves on the losing end of government takings and development projects. One area where this influence remains is in **surveying laws** related to eminent domain. Historically, those in charge of public projects could enter private land to conduct surveys without meaningful consent from landowners. This practice, rooted in a time when political bosses like McKenzie could use the law to their advantage, has persisted—leaving landowners with little say in who can access their property and when. Eminent domain is a necessary but delicate process—one that requires balancing the needs of the public with the rights of private landowners. This bill strengthens that balance by ensuring that before any land is surveyed for potential public use, landowners must either provide written consent or a court must approve the entry. This is a critical safeguard for property owners while still allowing necessary public projects to move forward efficiently.

Additionally, this bill reinforces the principle that surveyors must act responsibly and in good faith. It explicitly states that any claim for relief is limited to cases of negligence, wantonness, or malice. This ensures that landowners are protected from careless or reckless actions while also preventing frivolous claims that could delay important infrastructure projects.

Finally, by requiring that projects be planned in a way that maximizes public benefit while minimizing private harm, this bill upholds the fundamental fairness that should guide all eminent domain proceedings. This is a bill rerun without an emergency clause. Last session this bill sailed through the Senate chamber with almost unanimous support from the chamber and the energy industry. We again have energy industry support on this bill. We did try to get some other parts of the survey producers in on support, but it was a bridge too far and would have neutered the legislation. The removal of the emergency clause does give all involved time to plan

and get the proper permission, in other words get ahead of it. I am asking for committee support from members of the House Energy and Natural Resources Committee, this is a commonsense measure that respects the rights of landowners while ensuring that necessary public projects can proceed in an orderly and fair manner. I urge a do-pass vote on SB2379.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2379
House Energy and Natural Resources Committee
March 13, 2025

Chairman Porters and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents hundreds of farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2379 because it creates an orderly process for these surveys to be conducted if the condemning authority is not able to obtain the landowner's permission. Sending surveyors and others out onto property owned by a landowner who has said no is not only offensive, but just not an orderly way to obtain access by force.

This law allows companies to access our property to conduct their surveys, and some of these surveys are done under federal environmental laws with findings reported to federal agencies. Some of them have significant soil borings. These can be intrusive surveys. Our understanding is that responsible developers do not object to obtaining a court order when they cannot obtain permission. We agree this is the best practice and ask for a DO PASS on SB 2379 for these reasons.

Thank you,

Troy Coons
Northwest Landowners Association

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2379

3/20/2025

Relating to the surveying process during eminent domain proceedings.
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2:32 p.m. Chairman Porter opened meeting

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Possible amendments

2:33 p.m. Representative Weisz introduced amendment LC#25.1345.02003. #43301

2:41 p.m. Chairman Porter closed the meeting

Addison Randazzo for Leah Kuball, Committee Clerk

25.1345.02003
Title.

Prepared by the Legislative Council
staff for Representative Weisz
March 20, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2379

Introduced by

Senators Boehm, Magrum, Wobbema

Representatives D. Johnston, Koppelman, Fisher

1 A BILL for an Act to amend and reenact section 32-15-06 of the North Dakota Century Code,
2 relating to the surveying process during eminent domain proceedings.

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

4 **SECTION 1. AMENDMENT.** Section 32-15-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **32-15-06. Entry for making surveys.**

7 1. a. In all cases when a case in which land is required for public use, the person or
8 corporation, or the person's or corporation's agents, in charge of such the use
9 may survey and locate the same, but it land upon obtaining written consent
10 from after providing the landowner or by order of the court a written notice of intent
11 to survey. The notice must contain the name, proposed completion date, type,
12 proposed route or location of the project associated with the survey, nature of the
13 work the person in charge of the public use intends to complete, and the name,
14 telephone number, physical address, and mailing address of the person in charge
15 of the public use.
16 b. The person in charge of the public use shall deliver the notice to the landowner
17 through certified mail. The person in charge of the public use may not survey the
18 land until thirty days after delivery of the notice, unless the landowner consents to
19 an earlier survey date. If the person in charge of the public use fails to survey the
20 land within ninety days of delivery of the notice, the person shall deliver a new

1 notice of intent to survey through certified mail. A survey conducted under a
2 subsequently issued notice of intent to survey must be conducted in accordance
3 with the timeline established under this subdivision.

4 2. The survey and location of the condemner's project must be located in the manner
5 which will be compatible with the greatest public benefit and the least private injury
6 and subject to the provisions of section 32-15-21. ~~Whoever is~~
7 3. The person in charge of such the public use may enter upon the land and make
8 examinations, surveys, and maps thereof of the land in accordance with subsection 1,
9 and ~~such the entry constitutes no~~ does not constitute a claim for relief in favor of the
10 owner of the land except for injuries resulting from negligence, wantonness, or malice.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2379
3/21/2025

Relating to the surveying process during eminent domain proceedings.
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9:35 a.m. Chairman Porter opened meeting.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Committee action

9:40 a.m. Representative Heinert moved amendment LC#25.1345.02003 with additional changes. (previous testimony #43301)

9:40 a.m. Representative J. Olson seconded the motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Austin Foss	N
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	N
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	N

Motion carried: 9-4-0

9:42 a.m. Representative D. Anderson moved do pass as amended.

9:42 a.m. Representative Novak seconded the motion

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y

Representative Liz Conmy	N
Representative Jason Dockter	Y
Representative Austin Foss	N
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	Y
Representative Jorin Johnson	N
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	N

Motion Carried: 9-4-0

Representative D. Anderson will carry the bill.

9:43 a.m. Chairman Porter closed the meeting

Addison Randazzo for Leah Kuball, Committee Clerk

CO
3/21/25
10fz

Sixty-ninth
Legislative Assembly
of North Dakota

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FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2379

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3. The person in charge of ~~such~~ the public use may enter upon the land and make examinations, surveys, and maps thereof of the land in accordance with subsection 1, and ~~such~~ the entry ~~constitutes~~ does not constitute a claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

**REPORT OF STANDING COMMITTEE
ENGROSSED SB 2379**

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS** ([25.1345.02004](#)) and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2379 was placed on the Sixth order on the calendar.