

HOUSE BILL NO. 1184

Introduced by

Representatives Kading, Becker, Ertelt, Johnston, Laning, D. Ruby, M. Ruby, Toman

Senator O. Larsen

1 A BILL for an Act to amend and reenact sections 2-06-08, 32-15-01, and 40-22-05, subsection 2
2 of section 61-16.1-09, section 61-24.8-06, and subsection 2 of section 61-40-05 of the North
3 Dakota Century Code, relating to eliminating the ability of state and local government authorities
4 from using quick take eminent domain; and to repeal sections 11-10-26 and 24-01-22.1 of the
5 North Dakota Century Code, relating to appeals related to acquiring a right of way through the
6 use of quick take eminent domain.

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

8 **SECTION 1. AMENDMENT.** Section 2-06-08 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **2-06-08. Eminent domain.**

11 In the acquisition of property by eminent domain proceedings authorized by this chapter, an
12 airport authority shall proceed in the manner provided by chapter 32-15 and other applicable
13 laws. An airport authority may use eminent domain to acquire property acquired by its current
14 owner by eminent domain proceedings. The authority may enter land to make surveys and
15 examinations related to eminent domain proceedings as long as doing so results in no
16 unnecessary damage. ~~Notwithstanding the provisions of any other statute, an authority may~~
17 ~~take possession of any property to be acquired by eminent domain proceedings at any time~~
18 ~~after the commencement of the proceedings. The authority may abandon the proceedings at~~
19 ~~any time before final order and decree of the court having jurisdiction of the proceedings,~~
20 ~~provided the authority is liable to the owner of the property for any damage done to the property~~
21 ~~during possession by the authority.~~

22 **SECTION 2. AMENDMENT.** Section 32-15-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **32-15-01. Eminent domain defined - How exercised - Condemnor defined -**

2 **Exceptions.**

3 1. Eminent domain is the right to take private property for public use.

4 2. Private property may not be taken or damaged for public use without just
5 compensation first having been made to or paid into court for the owner. When private
6 property is taken by a person, no benefit to accrue from the proposed improvement
7 may be allowed in ascertaining the compensation to be made therefor. Private
8 property may not be taken for the use of, or ownership by, any private individual or
9 entity, unless that property is necessary for conducting a common carrier or utility
10 business. A determination of the compensation must be made by a jury, unless a jury
11 is waived. The right of eminent domain may be exercised in the manner provided in
12 this chapter.

13 3. Notwithstanding any other provision of law, a state entity or political subdivision may
14 not acquire private property through the use of quick take eminent domain.

15 4. Notwithstanding any other provision of law, a public use or a public purpose does not
16 include public benefits of economic development, including an increase in tax base,
17 tax revenues, employment, or general economic health.

18 4.5. For the purpose of this chapter, "condemnor" means a person empowered to take
19 property under the power of eminent domain.

20 **SECTION 3. AMENDMENT.** Section 40-22-05 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **40-22-05. Condemnation of land and rights of way for special improvements ~~-Taking~~**
23 **~~of possession - Trial - Appeal - Vacation of judgment.~~**

24 Whenever property required to make any improvement authorized by this chapter is to be
25 taken by condemnation proceedings, the court, upon request by resolution of the governing
26 body of the municipality making such improvement, shall call a special term of court for the trial
27 of the proceedings and may summon a jury for the trial whenever necessary. The proceedings
28 ~~shall~~must be instituted and prosecuted in accordance with the provisions of chapter 32-15,
29 ~~except that when the interest sought to be acquired is a right of way for the opening, laying out,~~
30 ~~widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality,~~
31 ~~or for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm-~~

1 ~~water, or sewage, whether within or without the municipality, the municipality may make an offer~~
2 ~~to purchase the right of way and may deposit the amount of the offer with the clerk of the district~~
3 ~~court of the county wherein the right of way is located, and may thereupon take possession of~~
4 ~~the right of way forthwith. The offer shall be made by resolution of the governing body of the~~
5 ~~municipality, a copy of which shall be attached to the complaint filed with said clerk of court in~~
6 ~~accordance with section 32-15-18. The clerk shall immediately notify the owner or owners of the~~
7 ~~land wherein the right of way is located of the deposit, by causing a notice to be appended to~~
8 ~~the summons when served and published in said proceedings as provided in the North Dakota~~
9 ~~Rules of Civil Procedure, stating the amount deposited or agreed in the resolution to be~~
10 ~~deposited. The owner may thereupon appeal to the court by filing an answer to the complaint in~~
11 ~~the manner provided in the North Dakota Rules of Civil Procedure, and may have a jury trial,~~
12 ~~unless a jury be waived, to determine the damages. However, upon due proof of the service of~~
13 ~~said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the~~
14 ~~court may without further notice make and enter an order determining the municipality to be~~
15 ~~entitled to take immediate possession of the right of way. If under laws of the United States~~
16 ~~proceedings for the acquisition of any right of way are required to be instituted in or removed to~~
17 ~~a federal court, the proceedings may be taken in that court in the same manner and with the~~
18 ~~same effect as provided in this section and the clerk of the district court of the county in which~~
19 ~~the right of way is located shall perform any and all of the duties set forth in this section, if~~
20 ~~directed to do so by the federal court. The proceedings shall be determined as speedily as~~
21 ~~practicable. An appeal from a judgment in the condemnation proceedings shall be taken within~~
22 ~~sixty days after the entry of the judgment, and the appeal shall be given preference by the~~
23 ~~supreme court over all other civil cases except election contests. No final judgment in the~~
24 ~~condemnation proceedings awarding damages to property used by a municipality for street,~~
25 ~~sewer, or other purposes shall be vacated or set aside if the municipality shall pay to the~~
26 ~~defendant, or shall pay into court for the defendant, in cash, the amount so awarded. The~~
27 ~~municipality may levy special assessments to pay all or any part of the judgment and at the time~~
28 ~~of the next annual tax levy may levy a general tax for the payment of the part of the judgment as~~
29 ~~is not to be paid by special assessment. For the purpose of providing funds for the payment of~~
30 ~~the judgment, or for the deposit of the amount offered for purchase of a right of way as provided~~
31 ~~above, the municipality may issue warrants on the fund of the improvement district as provided~~

1 in section 40-24-19, in anticipation of the levy and collection of special assessments and of any
2 taxes or revenues to be appropriated to the fund in accordance with the provisions of this title.
3 The warrants may be issued upon the commencement of the condemnation proceedings or at
4 any time thereafter. Upon the failure of the municipality to make payment in accordance with
5 this section, the judgment in the condemnation proceedings may be vacated.

6 **SECTION 4. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 2. Exercise the power of eminent domain as follows:

- 9 a. ~~Except as permitted under subdivision b, the board shall comply in accordance~~
10 with title 32 for the purpose of acquiring and securing by eminent domain any
11 rights, titles, interests, estates, or easements necessary or proper to carry out the
12 duties imposed by this chapter, and particularly to acquire the necessary rights in
13 land for the construction of dams, flood control projects, and other water
14 conservation, distribution, and supply works of any nature and to permit the
15 flooding of lands, and to secure the right of access to such dams and other
16 devices and the right of public access to any waters impounded thereby.
- 17 b. (1) ~~If the interest sought to be acquired is an easement for a right of way for any~~
18 ~~project authorized in this chapter for which federal or state funds have been~~
19 ~~made available, the district may acquire the right of way by quick take~~
20 ~~eminent domain as authorized by section 16 of article I of the Constitution of~~
21 ~~North Dakota, after the district attempts to purchase the easement for the~~
22 ~~right of way by:~~
- 23 (a) ~~Conducting informal negotiations for not less than sixty days.~~
- 24 (b) ~~If informal negotiations fail, the district shall engage in formal~~
25 ~~negotiations by:~~
- 26 [1] ~~Sending the landowner an appraisal and written offer for just~~
27 ~~compensation, which includes a specific description of the exact~~
28 ~~location of the right of way, by certified mail or commercial~~
29 ~~delivery requiring a signed receipt, and receiving the signed~~
30 ~~receipt or documentation of constructive notice.~~

- 1 ~~[2] Sending the landowner a written request for a meeting by-~~
2 ~~certified mail or commercial delivery requiring a signed receipt if~~
3 ~~there is no agreement regarding compensation or no response to~~
4 ~~the written offer within fifteen days of receipt, and receiving the~~
5 ~~signed receipt or documentation of constructive notice.~~
- 6 ~~[3] Sending the landowner a written notice, by certified mail or~~
7 ~~commercial delivery requiring a signed receipt, of intent to take~~
8 ~~possession of the right of way if there is no agreement regarding~~
9 ~~compensation or no response to the written request for a~~
10 ~~meeting within thirty days of receipt, and receiving the signed~~
11 ~~receipt or documentation of constructive notice.~~
- 12 ~~(2) Any written communication to the landowner must include contact~~
13 ~~information for responding to the board and a description of the required~~
14 ~~negotiation timeline.~~
- 15 ~~(3) A district may not include or utilize any reference to quick take eminent~~
16 ~~domain during negotiations to acquire the necessary easement for a right of~~
17 ~~way. If formal negotiation efforts fail, the district shall request approval from~~
18 ~~the board of county commissioners of the county in which the right of way is~~
19 ~~located to take possession of the right of way by quick take eminent domain.~~
20 ~~After receiving the request, the county commissioners shall hold a public~~
21 ~~meeting and give the landowner thirty days' notice of the meeting to allow~~
22 ~~the landowner to attend. After receiving verification from the district that~~
23 ~~there has been no reference or threat of quick take eminent domain by the~~
24 ~~district during negotiations, the commissioners shall vote on whether to~~
25 ~~approve the taking of the easement for a right of way using quick take~~
26 ~~eminent domain. If the county commissioners approve the use of quick take~~
27 ~~eminent domain by a majority vote, the district may take immediate~~
28 ~~possession of the right of way, but not a blanket easement, if the district files~~
29 ~~an affidavit by the chairman of the water resource board which states the~~
30 ~~district has fulfilled the required negotiation steps and deposits the amount~~

1 of the written offer with the clerk of the district court of the county in which
2 the right of way is located.

3 (4) Within thirty days after notice has been given in writing to the landowner by
4 the clerk of the district court that a deposit has been made for the taking of a
5 right of way as authorized in this subsection, the owner of the property taken
6 may appeal to the district court by serving a notice of appeal upon the
7 acquiring agency, and the matter must be tried at the next regular or special
8 term of court with a jury unless a jury be waived, in the manner prescribed
9 for trials under chapter 32-15.

10 (5) If ownership of a right of way has not terminated, ownership of a right of way
11 acquired under this subdivision terminates automatically when the district no
12 longer needs the right of way for the purpose for which it was acquired.

13 **SECTION 5. AMENDMENT.** Section 61-24.8-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **61-24.8-06. Condemnation of land and rights of way for special improvements –**
16 **~~Taking of possession – Trial – Appeal – Vacation of judgment.~~**

17 When property required to make any improvement authorized by this chapter is to be taken
18 by condemnation proceedings, the court, upon request by resolution of the board of the district
19 making the improvement, shall call a special term of court for the trial of the proceedings and
20 may summon a jury for the trial. The proceedings must be instituted and prosecuted in
21 accordance with chapter 32-15, except that when the interest sought to be acquired is a right of
22 way for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water,
23 whether within or without the district, the district may make an offer to purchase the right of way
24 and may deposit the amount of the offer with the clerk of the district court of the county in which
25 the right of way is located, and may then take possession of the right of way. The offer must be
26 made by resolution of the board of the district, and a copy of the resolution must be attached to
27 the complaint filed with the clerk of court in accordance with section 32-15-18. The clerk shall
28 immediately notify the owners of the land on which the right of way is located of the deposit by
29 causing a notice to be appended to the summons when served and published in the
30 proceedings as provided in the North Dakota Rules of Civil Procedure stating the amount
31 deposited or agreed in the resolution to be deposited. The owner may then appeal to the court

1 by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil
2 Procedure and may have a jury trial, unless a jury is waived, to determine the damages.
3 However, upon due proof of the service of the notice and summons and upon deposit of the
4 aggregate sum agreed in the resolution, the court without further notice may make and enter an
5 order as authorized by section 16 of article I of the Constitution of North Dakota. If under laws of
6 the United States proceedings for the acquisition of any right of way are required to be instituted
7 in or removed to a federal court, the proceedings may be taken in that court in the same
8 manner and with the same effect as provided in this section and the clerk of the district court of
9 the county in which the right of way is located shall perform any and all of the duties set forth in
10 this section if the clerk is directed to do so by the federal court. The proceedings must be
11 determined as speedily as practicable. An appeal from a judgment in the condemnation
12 proceedings must be taken within sixty days after the entry of the judgment and appeal must be
13 given preference by the supreme court over all other civil cases except election contests. No
14 final judgment in the condemnation proceedings awarding damages to property used by the
15 district for irrigation or other purposes may be vacated or set aside if the district pays to the
16 defendant, or into court for the defendant, the amount awarded in cash. The district may levy
17 special assessments within the district to pay all or part of the judgment. To provide funds for
18 the payment of the judgment or for the deposit of the amount offered for purchase of a right of
19 way, the district may issue bonds on the fund of the improvement district as provided in
20 section 61-24.8-09 in anticipation of the levy and collection of special assessments or revenues
21 to be appropriated to the fund in accordance with this chapter. The bonds may be issued upon
22 or after the commencement of the condemnation proceedings. Upon the failure of the district to
23 make payment in accordance with this section, the judgment in the condemnation proceedings
24 may be vacated.

25 **SECTION 6. AMENDMENT.** Subsection 2 of section 61-40-05 of the North Dakota Century
26 Code is amended and reenacted as follows:

27 2. Exercise the power of eminent domain in the manner provided by title 32 or as
28 described in this chapter for the purpose of acquiring and securing any right, title,
29 interest, estate, or easement necessary or proper to carry out the duties imposed by
30 this chapter, and particularly to acquire the necessary rights in land for the
31 construction of an entire part of any pipeline, reservoir, connection, valve, pumping

1 installation, or other facility for the storage, transportation, or utilization of water and all
2 other appurtenant facilities used in connection with the authority. However, if the
3 interest sought to be acquired is a right of way for any project authorized in this
4 chapter, the authority, after making a written offer to purchase the right of way and
5 depositing the amount of the offer with the clerk of the district court of the county in
6 which the right of way is located, may take immediate possession of the right of way,
7 as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty
8 days after notice has been given in writing to the landowner by the clerk of the district
9 court that a deposit has been made for the taking of a right of way as authorized in this
10 subsection, the owner of the property taken may appeal to the district court by serving
11 a notice of appeal upon the acquiring agency, and the matter must be tried at the next
12 regular or special term of court with a jury unless a jury be waived, in the manner
13 prescribed for trials under chapter 32-15.

14 **SECTION 7. REPEAL.** Sections 11-10-26 and 24-01-22.1 of the North Dakota Century
15 Code are repealed.