

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2313

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Room J216, State Capitol

SB 2313
1/26/2023

A bill relating to eminent domain and the assessment of damages.

9:30 AM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard, and Magrum.

Discussion Topics:

- Land sales
- Market values
- Forced sales
- Eminent domain

9:30 AM Senator Magrum introduced the bill and provided written testimony #17069.

9:33 AM Troy Coons, Northwest Landowners Association, testified in favor of the bill and provided written testimony #17188.

9:35 AM Derrikk Braaten, Attorney for Norwest Landowners Association spoke in favor of the bill.

9:46 AM Gerald Gorick, rancher, and President of Sons of Liberty, spoke in favor of the bill.

9:48 AM Chairman Patten called for a recess.

9:51 AM Chairman Patten continued the hearing.

9:51 AM Senator David Hogue spoke in favor of the bill.

9:58 AM Aaron Birst, Association of Counties spoke opposed to the bill.

10:03 AM Paul Pitner, President of Minot City Council testified opposed to the bill and provided written testimony #16979.

10:13 AM Jeffrey Skaare, Sequestration Director of Land Legal and Regulatory Affairs for Summit Carbon Solutions testified opposed to the bill and provided written testimony #17189.

10:22 AM Brady Pelton, Vice President, North Dakota Petroleum Council spoke opposed to the bill and provided written testimony #17046.

10:30 AM Jason Bohrer, Lignite Energy Council, testified opposed to the bill and provided written testimony #16981.

10:36 AM Mark Bring, Ottertail Power Company, testified opposed to the bill and offered written testimony #17045.

10:40 AM Andrea Fennig spoke opposed to the bill.

10:42 AM Jason Benson, Cass County Engineer, spoke on TEAMS opposed to the bill #16931.

10:46 AM Chairman Patten closed the public hearing.

Additional written testimony:

Dan and Sue McClean #15858.

Duane Dekrey #16900.

Duane Gaustad #16857.

Mark Gaydos #16875.

Brenda Derrig #16947.

Carlene McLeod #16994.

Josh Teigen #17048.

Jodi Smith #17190

Ryan Carter #17213

10:46 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2313
1/26/2023

A bill relating to eminent domain and the assessment of damages.
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11:04 AM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Magrum, Kessel, Kannianen, Boehm, and Beard.

Discussion Topics:

- Land sales
- Market values
- Forced sales
- Eminent domain

11:04 AM Chairman Patten reopened the public hearing. There was not further testimony.

11:06 AM Chairman Patten closed the public hearing.

11:06 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2313
2/10/2023

A bill relating to eminent domain and the assessment of damages.

9:09 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Committee action

9:11 AM Senator Magrum moves to adopt amendment LC 23.0914.01002, #20498. Motion seconded by Senator Boehm.

9:11 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	N

Motion passes 4-2-0.

9:17 AM Senator Patten moves to adopt amendment LC 23.0914.01001, #20609 and to eliminate amendment LC 23.0914.01002. Motion seconded by Senator Kannianen.

9:17 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

9:28 AM Senator Kannianen moves to Do Pass the bill as amended. Motion is seconded by Senator Kessel.

9:28 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0

Senator Kaniannen will carry the bill.

This bill does not affect workforce development.

9:29 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

January 31, 2023

AG
J-10-23
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2313

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding fair and just compensation and increased damages in eminent domain proceedings."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FAIR AND JUST COMPENSATION IN EMINENT DOMAIN PROCEEDINGS. During the 2023-24 interim, the legislative management shall consider studying fair and just compensation in all eminent domain proceedings. The study must include the methods and factors used to determine fair and just compensation and whether certain landowners should be entitled to increased damages for certain projects, and if so, the extent of the increased damages. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2313: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2313 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study regarding fair and just compensation and increased damages in eminent domain proceedings."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FAIR AND JUST COMPENSATION IN EMINENT DOMAIN PROCEEDINGS. During the 2023-24 interim, the legislative management shall consider studying fair and just compensation in all eminent domain proceedings. The study must include the methods and factors used to determine fair and just compensation and whether certain landowners should be entitled to increased damages for certain projects, and if so, the extent of the increased damages. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2313
2/10/2023

A bill relating to eminent domain and the assessment of damages

10:32 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Magrum, Boehm, Beard, Kessel and Kanniannen are present.

Discussion Topics:

- Amendments

10:32 AM The committee has discussion about two amendments that were made to the bill, The committee agrees that the Amendment LC 23.0914.01001 adopted that was moved by Senator Patten eliminated the amendment LC 23.0914.01002 that was moved by Senator Magrum.

10:34 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2313

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313
3/17/2023

To provide for a legislative management study regarding fair and just compensation and increased damages in eminent domain proceedings
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9:01 AM Chairman Porter opened the hearing.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, Roers Jones, and Ruby.

Discussion Topics:

- Possible Study
- Proposed Amendment

Sen Jeff Magrum, District 8, introduced SB 2313, Testimony #25690
Troy Coons, Chairman, NW Landowners Association, Testimony #25687

Additional written testimony:

Josh Tiegen, Commissioner, ND Dept of Commerce, Testimony #25635

9:09 AM Chairman Porter closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2313
3/23/2023

To provide for a legislative management study regarding fair and just compensation and increased damages in eminent domain proceedings

9:21 AM Chairman Porter opened the meeting.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby.
Absent: Representative Kasper

Discussion Topics:

- Committee action

Rep Ruby moved a Do Pass on SB 2313, seconded by Rep Marschall.

Representatives	Vote
Representative Todd Porter	N
Representative Dick Anderson	N
Representative Glenn Bosch	AB
Representative Liz Conmy	AB
Representative Jason Dockter	N
Representative Jared Hagert	N
Representative Pat D. Heinert	N
Representative Zachary Ista	AB
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	N
Representative Matthew Ruby	Y

3-6-5 Motion failed.

Rep Anderson moved a Do Not Pass on SB 2313, seconded by Rep Heinert.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	AB
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	AB
Representative Jim Kasper	AB
Representative Andrew Marschall	N

Representative Anna S. Novak	AB
Representative Jeremy Olson	N
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	N

6-3-5 Motion carried. Rep Anderson is carrier.

9:26 AM Meeting adjourned.

Kathleen Davis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2313, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends DO NOT PASS (6 YEAS, 3 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2313 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2313

Please note that we are in favor of SB 2209, SB 2212, SB 2228

We were called and told by Summit Carbon (with no personal names given) that we were going to have a pipeline on our land. When we told them we did not want this on our land, they said fine they would just take it by eminent domain. Period. Even Senator Hoeven feels this should be voluntary.

We bought this land several years ago as a retirement investment. We both had full time jobs off the farm as well as about 100 head of sheep, and then about 100 head of cows. We eventually sold the sheep because they were labor intensive and kept the cows. As you can imagine we did not have a lot of free time. Weekends were spent trying to catch up on all of the work we didn't get done during the working hours on our jobs. But this was OK. We were working to pay off the land for our retirement. As mother nature has her own plan, we sold the cows during the drought. At our age (67 & 68) it was not feasible for us to restock. We were able to completely pay off the land. This gave us to opportunity to rent the pastures to other younger families. Now a private company that stands to make billions of dollars tells us they are taking our land and putting a pipeline on it that will devalue any retirement funds we may have wished for. This does nothing for my neighbors except puts a dangerous element in their backyards. This company states that they are in compliance with PHMSA regulations, but what they would like to do is completely new and regulations are not, as yet, fully adequate.

We are not the only people that do not like this in our neighborhood. Six townships have passed resolutions opposing eminent domain. We are also not the only state that does not want this (see SD, IA, NE).

In the United States, eminent domain is the power of the government to take away someone's private property. But the Fifth Amendment places two strict limits on eminent domain. First, private property can be taken only for "public use," or public works projects, like roads and bridges. Second, even if a property is taken for a public use, the owner must be paid "just compensation." (Institute for justice.)

Sue & Dan McLean

Menoken ND

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City of Grand Forks
(701) 746-4636

TESTIMONY ON SENATE BILL 2313

Senate Energy and Natural Resources

January 25, 2023

Daniel L. Gaustad, City Attorney, City of Grand Forks, ND

Chairman Patten and members of the Senate Energy and Natural Resources, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition to SB 2313.

The City of Grand Forks, like many cities in North Dakota and other governmental entities must construct public improvements, including streets, potable water and wastewater systems that are critical for its citizens.

In order to construct such public improvements, at times it does become necessary to acquire property interests from private landowners. In doing so, the City of Grand Forks, in good faith, makes all reasonable and diligent effort to acquire these property interests through negotiation as is required by N.D.C.C. § 35-15-06.1. However, despite such efforts, there are times these negotiations are not successful, which then necessitates the City of Grand Forks to acquire these property interests through an eminent domain action.

As this committee is aware, in an eminent domain action, the property owner is to be receive and be paid just compensation. Just compensation is the fair market value of the property interests sought to be acquired. Just compensation may also include severance damages (if the parcel sought to be acquired is part of a larger parcel) and consequential damages (if property is not acquired but damaged by the construction of the public improvement). Finally, the law allows the court to award the property owner the costs and attorneys' fees incurred in the eminent domain action.

Senate Bill 2313, as proposed, would increase the amount to be paid for the property interests that must be acquired through an eminent domain action to exceeds the fair market value of the property acquired and any applicable damages by 33%. This will negatively affect the City of Grand Forks and other government bodies. First, this proposed bill will create an obvious financial impact and stress in the construction of public improvements which financial impact would then become a burden on other taxpayers. Second, the proposed bill will also likely create an impediment the City of Grand Forks and other governmental bodies to effectively negotiate the acquisition of property interests – which is pursued to avoid an eminent domain action – and reach a settlement without eminent domain litigation because even with an offer, made during negotiation,

that is equal to fair market value and any applicable damages, it is the eminent domain litigation that would result in a 33% multiplier.

The City of Grand Forks asks for a DO NOT PASS for SB 2313.



Transportation

Senate Bill No. 2313**Senate Energy and Natural Resources**

Room 216 | January 26, 2023, 9:30 a.m.

Mark Gaydos, Environmental and Transportation Services

Good morning, Mr. Chairman and members of the committee. My name is Mark Gaydos, Director of Environmental and Transportation Services for the North Dakota Department of Transportation (NDDOT). I'm here to provide information on Senate Bill 2313.

Senate Bill 2313 is applicable to department right of way acquisitions that include a court award for the assessment of damages. Chapter 24-01 of the North Dakota Century Code (NDCC) requires that trials and court procedures follow Chapter 32-15 of the NDCC.

The department completes appraisals in compliance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (The Uniform Act). The appraisals are developed by state-certified appraisers to determine the fair market value and just compensation for the right of way taking. If the property taken is only part of the larger parcel, the appraisals address the before and after taking fair market values and any severance. The department then makes an offer and strives to negotiate with the property owner. The negotiations address the appraised values and any considerations that may be identified by the property owner. In rare instances condemnation is pursued.

When a condemnation case goes to trial, the jury award assesses both the value of property taken and damages to the portion of property not taken based on the trial proceedings. At times the courts will also award reasonable attorney fees and expenses associated with the case to the property owner.

The bill would impact the amount paid in condemnation cases by increasing the assessment of damages determined and awarded by the jury by 33%.

This concludes my testimony. Thank you, Mr. Chairman, I can answer any questions.

**Testimony by Duane DeKrey
General Manager
Garrison Diversion Conservancy District**

**To the
Senate Natural Resources Committee
Senate Bill 2313 Hearing**

**Bismarck, North Dakota
January 26, 2023**

Chairman Patten, members of the committee, I appreciate the opportunity to testify in opposition to Senate Bill (SB) 2313. My name is Duane DeKrey, General Manager of Garrison Diversion Conservancy District since 2014.

I am here to testify today in opposition to SB 2313, which proposes to increase the amount of litigation needed to construct a public project and would drastically increase the cost of water projects by gifting landowners an additional 33% for their property above and beyond the fair market value, in addition to the reasonable attorney's fees that property owners are awarded as part of the eminent domain process. For clarity, under the current law, landowners whose land is taken by eminent domain are awarded their reasonable attorney's fees. Thus, the additional 33% will increase the cost of the project and provide a disincentive for landowners to negotiate with public entities. The substantial increase in project costs will result in diminished funding for essential public projects throughout the state and, ultimately, an increased tax burden on local citizens.

Garrison Diversion has successfully negotiated over 150 permanent easements on its work to build the Red River Valley Water Supply Project, so we have a lot of experience with the easement negotiation process. Based on this experience, SB 2313 would greatly discourage negotiations with landowners as going to court would guarantee

landowners a 33% increase above the value of their property. If this law had been in place, Garrison Diversion would have been in 150 additional lawsuits where the only real winners would have been the lawyers, while leaving taxpayers on the hook for paying more than the value of the land, not to mention the increase in construction costs due to the delay of the project.

Since the beginning of our national and state governments, the United States and North Dakota Constitutions have provided that private property cannot be taken for public use without the public entity paying “just compensation” to the private property owner. Just compensation means payment equal to the value of the property or property interest taken. In short, landowners need to be fairly compensated.

SB 2313 would substantially alter the meaning of “just compensation” by providing a 33% litigation bonus. This creates a windfall to every landowner and lawyer who goes to trial while increasing the number of trials in the court system, the cost of public projects, and ultimately resulting in higher rates and tax burdens on the customers and taxpayers.

I am not sure what problem SB 2313 is hoping to solve, but the bill would result in less negotiations with landowners and more lengthy litigation, counter to the noble efforts of prior legislative sessions, and in the end, cause a delay of projects and more financial pressure on the limited resources in the Resources Trust Fund.

I urge you to reject SB 2313, and instead continue the sufficient constitutional protections currently in place to fairly compensate landowners and encourage voluntary negotiations. Thank you for considering my comments on SB 2313.

Testimony Prepared for the
Senate Energy and Natural Resources Committee
January 26, 2023
By: Jason Benson, Cass County Engineer



RE: Oppose SB 2313 - relating to eminent domain and the assessment of damages

Chairman Patton and Senate Energy and Natural Resources Committee members, thank you for the opportunity to provide testimony on SB 2313. I am Jason Benson, the Cass County Engineer, and I also serve on the legislative committee for the ND Association of County Engineers. I am here to oppose the bill as proposed. This bill will disincentivize landowners from conducting fair negotiations with Counties for the acquisition of land for road and bridge projects. This bill will result in higher costs to Counties and a significant increase in court cases for eminent domain.

County Highway Departments across North Dakota routinely acquire strips of land adjacent to roads and bridges. It is not uncommon for a six-mile reconstruction project to require an additional 15 or 20 feet of right of way or easement to improve the road to today's highway standards. A project like this may require working with 30 to 50 landowners along the corridor.

Our goal in right of way acquisition is to be fair and reasonable in our process so that both the landowner and the County taxpayer dollars are treated fairly. A 20-foot strip of land along a half mile of road is 1.2 acres. In the last year we have seen appraised values of land come in around \$8000-\$10,000 per acre. Our process now includes sitting down with the landowner, showing them the appraisal, and conducting fair negotiations to come to a reasonable value.

This bill will directly provide a 33% value increase to their property if the landowner forces the County to eminent domain. In the example above, 1.2 acres at \$10,000 would have a price of \$12,000. If this bill is passed the landowner would be incentivized to be taken to court under eminent domain. The result will be they will get an extra \$4000 for the 1.2 acres, for a total of \$16,000. For the price of a tank of gas to drive to the court hearing, the landowner will collect an extra \$4000.

Of course, this \$4000 does not include the administrative and legal costs to the County to bring this eminent domain case to trial. When totaling the land cost of the \$16,000 plus legal fees, the total cost for this 1.2 acres could exceed \$25,000. As I described above, 20 feet of additional right of way on both sides of the road along a six-mile corridor is roughly 29 acres. We would currently anticipate paying \$290,000 for this additional right of way. If this law passes, we expect to pay more than \$725,000 in land cost and legal fees for the same 29 acres. This financial toll on Counties would result in fewer road and bridge projects being completed in North Dakota.

Additionally, the time necessary to take 30 to 50 landowners to court for eminent domain will add years to a project. North Dakota has seen the regional construction cost index rise at a rate of 9% per year and at an even higher rate in recent years. A one- or two-year delay on a \$4 million project could significantly add to the project cost. In many Counties these types of significant road improvement projects would just not be attempted, and road infrastructure would deteriorate.

Chairman Patton and committee members, I want to reiterate that NDACE opposes the bill as written. Approving this bill will result in significant costs and time delays in the right of way and easement acquisition process for County road and bridge improvement projects. This bill will result in not only higher land cost, but significant costs on legal and court fees. This bill would also place a burden on the North Dakota courts with the eminent domain cases that would result. I urge a do not pass.

Testimony Presented on SB 2313 to the
Senate Energy and Natural Resources Committee
Senator Dale Patten, Chairman

Brenda E. Derrig, City Engineer for the City of Fargo

January 26, 2023

Mr. Chairman and Members of the Committee,

The city of Fargo is responsible for providing municipal services to its residents, including building roads, flood protection, water and sewer service, and other necessary infrastructure. In order to provide these services, the city collects property and sales taxes, as well as levies assessments to the appropriate benefitting properties.

There are times that the city may require additional property rights in order to provide these services, which may include purchasing land from private property owners. City staff takes every effort during the design of the infrastructure so that any impacts are minimized to the property owners, but nonetheless there are times that additional private property is needed to provide the necessary services. When the need arises, the City of Fargo undertakes negotiations with the property owners by making a good faith offer based on fair value as determined by an independent appraisal, as required by existing statute, all the while serving as good stewards of the taxpayers' money.

Unfortunately, there are times when negotiations are unsuccessful and the parties simply disagree on the value of the property. Under these circumstances, the City Commission determines legal action to secure the property interests is necessary. That determination is not taken lightly since no one favors litigation over negotiation. However, when it does become necessary, existing statutes provide for payment of the property owner's attorney fees in appropriate circumstances. The property owner's rights are protected, while balancing the need to serve the public purpose.

SB 2313 proposes to add thirty-three percent to the damage award, which unnecessarily increases the taxpayer burden for an infrastructure project that requires additional private property in order for the City to properly provide municipal services to its residents. Further, to simply add to the damages in the event of litigation will certainly result in more litigation, not less. It would simply be cost prohibitive to the city to offer an additional 33% at the outset of negotiations, without any certainty of resolution short of litigation. The only individuals who would benefit from that scenario is the lawyers involved.

The City of Fargo requests a DO NOT PASS on SB 2313.

Thank you.

January 25, 2023

**Sixty-eighth Legislative Assembly of North Dakota
Bismarck, ND
Senate Energy and Natural Resources Committee
Chairman, Senator Dale Patten**

RE: City of Minot Opposition for Senate Bill 2313

Chairman Patten and members of the Senate Energy and Natural Resources Committee, my name is Paul Pitner and I serve as President of the Minot City Council.

The City of Minot would like to express its strong opposition to Senate Bill 2313.

While the use of eminent domain is often unpopular it is seldom used and does have an important role as this procedure is only utilized when there is a significant public purpose.

Most recently the City of Minot has used the process to acquire properties necessary for the installation of flood control infrastructure following the 2011 flood event. To date the City of Minot has acquired approximately 535 residential and commercial properties to address the needed flood control improvements.

Despite the large number of properties acquired, the eminent domain process was started on only 27 properties. Some property owners refuse to sell or negotiate, others demand exorbitant prices. The eminent domain process ensures that the property owner is paid a fair market value (a \$100,000 property isn't purchased for \$10,000) and that the taxpayers aren't forced to pay significantly more than a property is worth (paying \$100,000 for a \$10,000 property). Of the 27 properties: 3 went to trial; 5 properties the property owner didn't respond and a default judgement was entered; 2 are still in process; and the remaining 17 were settled before trial. Using these numbers only 8 properties (3 at trial and 5 awarded by default) of the 535 acquisitions were obtained by eminent domain, or approximately 1.15%. The City of Minot has not used the eminent domain process for any property acquisition outside of flood mitigation according to current staff recollection.

As is outlined above, many acquisitions are settled without using the eminent domain process or before trial. All of these are typically settled at, or reasonably above, fair market value. Should this bill pass, all acquisitions will likely go through the court process because property owners and their attorneys will know that even if an entity wins an eminent domain proceeding

they will be paid at least 133% of the fair market value of their property. In addition, typically once these eminent domain cases are awarded the entity is required by the court to pay all costs of the property owner, including attorney fees and appraisal costs. As a result, not only will Cities, Counties, and the State pay the additional 33%, they will also have to pay the increase in additional court costs, attorney fees, and appraisal fees of more cases going through the entire eminent domain process.

In Minot's situation, the State helps fund 65% of acquisition costs. To date the City has invested \$81,244,027 in acquisition. If this bill was in effect at the time of acquisition another \$26,810,529 would be needed to complete the sorely needed public improvement of flood mitigation infrastructure. With the current funding commitment of the State this increase would represent an additional \$17,426,844 in State funding. This figure does not include the increase in court fees and attorney costs of the property owners.

If this bill passes entities needing to build public improvements would have to decide whether or not to proceed with the infrastructure project, delay projects to allow more time to raise the needed funding and potentially resulting in increased inflationary costs, or raise the tax burden on citizens to pay the additional cost.

Given the eminent domain process is rarely used, and paying fair market value is reasonable, the City of Minot respectfully requests a **Do Not Pass** vote on SB 2313.



January 25, 2023

Chairman Patten and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in opposition of Senate Bill 2313. The Lignite Energy Council consists of over 250 members representing lignite mines, electric utilities, independent power producers and contractor suppliers in the Upper Midwest. The lignite industry accounts for over 13,000 direct and indirect jobs, over \$5.4 billion in economic development and millions in state, county and local tax revenue.

For the past two decades, the Lignite Energy Council has worked with the legislature, state agencies and stakeholders to create an environment where our lignite reserves could be used for the production of clean, sustainable electricity, gasification products such as synthetic natural gas as well as fertilizers and many other valuable byproducts. The development of this huge industry has happened in a predictable and stable regulatory environment that elevates landowner relationships and agricultural uses to the top of our list of priorities. We are now adding the legal, tax, and regulatory framework to support development of carbon capture technology for the electric power that would position North Dakota to lead the nation in CO2 development. There is a long list of legislation that has been thoughtfully designed, debated and passed into law that includes conformity with federal laws, the fee structure at the North Dakota Industrial Commission, the long-term accountability for CO2 storage, Class VI primacy for pore space and the critically important state investments into research, and development to name a few policies that our industry has helped place into law.

The language found in SB2313 runs contrary to the decades of development that have sustained this industry and its communities and threatens not just emerging markets such as carbon capture, but even the expansion of our core industries such as electricity generation and transmission. We are proud of the community relations that our power plants and mines have built over the many decades that our industry has been in operation. Strong landowner relationships are the only way that these projects move forward and we have achieved high levels of landowner support while coexisting with the current eminent domain laws. The future of our economy depends on moving the commodities we produce to market through critical infrastructure.

For these reasons, the Lignite Energy Council opposes SB2313 and we respectfully ask that the committee move to give this legislation a "Do Not Pass" recommendation.

Thank you for your consideration,

Jason Bohrer
President and CEO

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Senate Bill 2313 Testimony in Opposition

Senate Energy and Natural Resources Committee, Senator Patten, Chair

January 26, 2023

Chairman Patten, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota, here on behalf of USND utility members, including Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy. We ask you to oppose SB 2313.

Property ownership is a right that should not be challenged unless necessary, and a property owner should not be stripped of any rights in pursuit of just compensation. It is appropriate that the law preserves the right to a jury trial 32-15-13, access to "any general, special, or adjourned term of district court" 32-15-17, and assessment of damages 32-15-22.

Similarly, it is appropriate that the law proscribes the responsibilities of the condemnor, one of which is the duty to "make every reasonable and diligent effort to acquire property by negotiation" 32-15-06.1(1), including offering the full amount established by an appraisal to be just compensation.

This bill is problematic, because it would incentivize the property owner to disregard any such offer, even an offer known to be fair, because of a guaranteed inflated payout through litigation. Litigation is costly and causes delay. Here, a property owner would benefit from refusing any pre-litigation offer knowing that when the court determines just compensation, the property owner will receive a judgment for that amount plus the increased 33%, and likely, also court costs and attorney fees.

In the case of a utility, those increased costs will be borne by customers.

Utility companies work diligently with regulatory agencies and affected parties when siting facilities. Collectively, they make every effort to accommodate the concerns of property owners and fairly compensate them for the use of their land. Use of eminent domain proceedings is extremely rare with ND's investor-owned utilities, but the ND Constitution reserves the right to use eminent domain because utility services are critical services. This bill would drive up costs for those critical services.

This committee knows how critical electric transmission infrastructure is to reliable, affordable electricity. The legislature should be considering and passing laws to incent the development of critical infrastructure rather than advancing ideas that make infrastructure development difficult and expensive. We urge the committee to reject this bill.

Thank you.

**Testimony of Mark Bring
Director of Public Policy and Government Affairs
Otter Tail Power Company**

**Before the Senate Energy & Natural Resources Committee
January 26, 2023**

Chairman Patten and members of the Committee, my name is Mark Bring and I serve as Director of Public Policy and Government Affairs for Otter Tail Power Company. I have been licensed as an attorney in North Dakota since 1992. I respectfully submit this testimony regarding our company's opposition to Senate Bill 2313.

Otter Tail Power Company is one of the smallest investor-owned utilities in the nation and is a subsidiary of Otter Tail Corporation, which is traded on the NASDAQ as OTTR. Otter Tail Corporation also owns several manufacturing companies engaged in metal fabricating, custom plastic parts manufacturing, and PVC pipe manufacturing. These non-energy businesses include Northern Pipe Products in Fargo.

Otter Tail Power Company is headquartered in Fergus Falls, Minnesota, and provides electricity and energy services to more than 133,000 customers spanning 70,000 square miles in western Minnesota, eastern North Dakota, and northeastern South Dakota. Our service area is predominantly rural and agricultural. By way of example, a median-sized community we serve in North Dakota is Michigan in Nelson County. According to the most recent U.S. Census Bureau statistics, Michigan has a population of 263 people. We serve many towns that are smaller yet, including my hometown of Galesburg in Traill County. The largest North Dakota communities served by our company are Devils Lake, Jamestown, and Wahpeton. Following its incorporation in 1907, our company began serving its very first customer in Wahpeton in 1909.

As an electric provider, our company has eminent domain authority under Chapter 32-15 of the Century Code. We take great pride in working collaboratively with landowners to avoid eminent domain proceedings, relying on right of way agents employed by the company and living in the rural communities we serve. During this process, it is not uncommon for our agents to develop meaningful friendships with the many landowners who recognize electricity is essential to the vibrancy and economic prosperity of the rural communities we serve. However, on very rare occasions it becomes necessary to acquire property interests pursuant to eminent domain proceedings.

Under existing state law, private property may not be taken or damaged for public use without just compensation first having been paid into court for the landowner. A landowner whose property has been taken by condemnation is entitled to fair market value of the property taken. The state Supreme Court has defined “fair market value” as “the highest price property can be sold for in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.” Failing a negotiated resolution by the parties, the amount of damages in an eminent domain action is a question of fact for a district court. In addition, the district court has discretion to award attorney fees and costs in an eminent domain action. These factors incent negotiated resolutions.

SB 2313 would turn these traditional policies on their head. It would add a new subsection to Chapter 32-15, requiring the district court to increase, by 33%, the fair market value award determined by the trier of fact.

SB 2313 would jeopardize the public interest. First, it would inevitably lead to delay in the timely provision of essential public services. There would be a disincentive for landowners to negotiate a good faith resolution of the fair market value for the condemnation, leading to costly and delay-ridden litigation. In

addition, the 33% premium itself and the additional costs of delay and litigation would ultimately be borne in the electric rates of all electric customers.

The public interest and the greater good are not well-served by such a policy. We urge a DO NOT PASS on SB 2313.



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Senate Bill 2313
Testimony of Brady Pelton
Senate Energy and Natural Resources Committee
January 26, 2023

Chairman Patten and members of the Committee, my name is Brady Pelton, vice president of the North Dakota Petroleum Council (“NDPC”). The North Dakota Petroleum Council represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition to Senate Bill 2313.

The bill before you creates a significant premium for property sought to be condemned for public use through the eminent domain process by increasing the damages assessment on such property by thirty-three percent. The consequences of this proposal, though likely unintentional, could not be more detrimental to the infrastructure development necessary for North Dakota’s success story to continue.

In the oil and gas industry, eminent domain is a process used rarely and as a last resort in instances where, typically, a small amount of property is sought and cannot be avoided. Eminent domain proceedings are costly and time consuming, often causing significant delays to the start dates of project construction. The use of and access to private property is, quite frankly, not something North Dakota’s oil and gas companies take lightly. Our developers much rather prefer property use issues to be resolved through earnest negotiations between landmen and landowners.

Instead of incentivizing developers to avoid acquiring access to property through the eminent domain process, this bill is likely to result in a dramatic increase in the number of eminent domain proceedings by incentivizing property owners to forego negotiations with developers altogether. Property owners who stand to gain 33 percent more than actual damages simply by forcing a developer to acquire use through eminent domain are extremely unlikely to negotiate with that developer in good faith.

This unlikelihood, coupled with automatically increasing the amount of an eminent domain assessment by 33 percent, will have a tremendous impact on the already high costs of infrastructure development. The cost increases that will result with passage of this bill are likely to make pipelines and other critical infrastructure development uneconomic and cost prohibitive, significantly reducing North Dakota's ability to compete with other regions of the country in growing its economy.

Senate Bill 2313 severely restricts the ability of all infrastructure developers to use property deemed necessary for public use, and its broad-sweeping application to all instances of eminent domain poses an incredible risk to future development in not only the oil- and gas-producing region of North Dakota but infrastructure development across the state.

NDPC strongly opposes this bill and the multitude of potential negative consequences likely with its passage, and we therefore urge a Do Not Pass recommendation for Senate Bill 2313.

Thank you, and I would be happy to answer any questions.



Testimony in Opposition of
House Bill No. 2313
Education and Environment Division of the House
Appropriations
January 26, 2023

TESTIMONY OF

Josh Teigen, Commissioner, ND Department of Commerce

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2313 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on a being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.

Testimony of Senator Jeff Magrum
in favor of
SENATE BILL NO. 2313
Senate Energy and Natural Resources Committee
January 26, 2023

Chairman Patten and members of the committee,

I sponsored SB 2313 because I feel that we should recognize that a landowner being forced to sell property is in a different position than one who chooses to sell. A forced sale can have significant impacts to the ongoing operation beyond just the value of the land. This bill recognizes that and increases the value of just compensation to recognize that landowners can receive market price when they willingly sell land, so we should be paying more when the sale is forced by the government.

The Northwest Landowners Association helped draft the language in this bill and determined the percentage to use, and Troy Coons, the chair of that organization, will speak about that in a little more detail.

I hope you will support this bill and vote do pass on SB 2313.

Thank you,
Senator Jeff Magrum

ARTICLE I DECLARATION OF RIGHTS

Section 1. All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Section 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Section 4. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Section 5. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

Section 6. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

Section 7. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

Section 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Section 9. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

Section 10. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval

THE
REVISED CODES

OF THE
STATE OF NORTH DAKOTA

1895

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES AND OF THE
STATE OF NORTH DAKOTA

WITH THE AMENDMENTS THERETO

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also milldams.

6. By-roads leading from highways to residences and farms.

7. Telegraph and telephone lines.

8. Sewerage of any incorporated city, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

9. Cemeteries and public parks.

§ 5957. What estate subject to be taken. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for a public use.

§ 5958. What property may be taken. The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to this state; or to any county, incorporated city, village or town not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, ferries and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section 5956 and any and all structures and improvements thereon and the lands, held or used in connection therewith shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They shall also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

§ 5959. What must appear before property taken. Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

§ 5960. Entry for making surveys, etc. In all cases when land is required for public use the person or corporation, or his or its agents, in charge of such use may survey and locate the same; but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the

provisions of section 5964. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness or malice.

§ 5961. **Proceedings by civil action.** All proceedings under this chapter must be prosecuted by civil action brought in the district court of the county in which the property, or some part thereof, is situated.

§ 5962. **What complaint must contain.** The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way is sought, the complaint must show the location, general route and termini and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

§ 5963. **Who may defend.** All persons in occupation of, or having or claiming an interest in any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him in like manner as if named in the complaint.

§ 5964. **Power of court.** The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 5960.

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

§ 5965. **Assessment of damages.** The jury, or court or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2313
Senate Energy and Natural Resources Committee
January 26, 2023

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 over 525 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 2313 because market value is often not “just” compensation for a landowner whose land was not for sale. As landowners, we are able to sell our land on the market for market value at most any time we want. Although it is not always the case, just compensation in eminent domain proceedings is most often measured by looking at market values, whether for a residential property or a pipeline easement. When a landowner is being forced to sell his land against his will, it is unfair that the remedy is merely what he would have received if he had chosen to sell his land. The point is that he did not and the land was not for sale, and this should be recognized when we compensate the landowner in an eminent domain proceeding.

I would also like to address the percentage in this bill because our organization helped suggest that percentage. I will admit that there is no magic to this number. Some people believed it should be 25 percent, some people believed it should be 100 percent. We chose something we felt was more middle of the road, but that recognizes the difference between a forced sale and willing seller.

We also believe that the most important effect of this legislation would be to reduce the use of eminent domain proceedings as a threat and encourage more settlements and resolutions instead of litigation.

Thank you,

Troy Coons
Northwest Landowners Association

**Summit Carbon Solutions Testimony on Senate Bill 2313
January 26, 2023, 9:00 (9:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2313

Chairman Patten, and fellow Senate Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's vast mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed Senate Bill No. 2313 and we oppose for the following reasons:

- 1.) The enactment of this Bill will only encourage additional eminent domain lawsuits.
- 2.) The enactment of this Bill will negatively impact economic development in North Dakota and will harm the development of infrastructure including infrastructure commissioned by the State.
- 3.) The enactment of this Bill is essentially an unlawful taking from the State or private entities.

I would like to address each of these points in turn.

First, by creating a percentage increase on the fair market value of land needed for infrastructure, you will have incentivized litigation. Landowners will have less incentive to negotiate fair

**Summit Carbon Solutions Testimony on Senate Bill 2313
January 26, 2023, 9:00 (9:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2313

market value easements when the perception is that a windfall is achieved through litigation. The legal community would embrace such legislation and would encourage legal action because pursuant to N.D.C.C. 32-15-32 the court may award costs and attorney's fees against the Petitioner (i.e., the party initiating the action for condemnation) in favor of the Respondent (landowner). This would create an additional incentive for the legal community to draw out the legal action to recover additional attorney's fees. Currently an eminent domain action creates a level playing field for both sides. It is level because the landowner is guaranteed to receive the fair market value of their land based upon a Trier of fact. By increasing the judgment by 33% you are incentivizing additional eminent domain actions.

Secondly, the enactment of this legislation will have a negative impact on all future projects. For North Dakota to continue to develop its vast natural resources, additional infrastructure is needed. North Dakota has long been a state open for business and the enactment of this legislation will send a clear signal to all those interested in developing infrastructure that North Dakota is no longer encouraging development. This bill negatively impacts economic development.

Third, the enactment of this bill is tantamount to an unlawful taking from State or Private Entities. It is picking the winners and losers and is the State Legislatures finger on the scales of justice. Assume for a moment that this Bill requested the opposite, a 33% reduction in the Tier of Facts' fair market value determination. If such a bill was introduced, the pushback would be tremendous and the cry from landowners would be heard nationwide. Such a bill would likely fail a legal challenge as an unlawful taking of property. How does this change when you flip from the Landowner to the State or

**Summit Carbon Solutions Testimony on Senate Bill 2313
January 26, 2023, 9:00 (9:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman**

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Opposition to SB 2313

Private entity? The answer is simple. It does not. Justice needs to be equal and influencing the legal outcomes is, in essence, placing your fingers on the scale of justice and creating an unlawful taking. A recommendation of Pass on this bill sends a clear message that North Dakota is not interested in economic development.

It is for these reasons that **we oppose** the enactment of Senate bill number 2313 and ask you to forward a **DO NOT PASS** recommendation. Thank you.



TESTIMONY ON SENATE BILL 2313

Senate Energy and Natural Resources

January 25, 2023

Chairman Patten and members of the Senate Energy and Natural Resources, my name is Jodi Smith and I am the Director of Lands and Compliance for the Metro Flood Diversion Authority (the "MFDA"). I want to thank you for the opportunity to provide testimony on SB 2313.

The MFDA is a North Dakota political subdivision that is cooperatively implementing the Fargo-Moorhead Area Diversion comprehensive project (the "project") with the U.S. Army Corps of Engineers. The MFDA also works in partnership with the Red River Valley Alliance in a public-private partnership, as well as working with the City of Fargo, City of Moorhead, Cass County, Clay County and the Cass County Joint Water Resource District.

Together, as a coalition of stakeholders and leaders on both sides of the river, we are working to bring permanent, reliable flood protection to our community. The project will provide a permanent solution to protect our communities, by using an innovative approach to divert excess water around the metro area during significant flood events.

In order to construct such public improvements, it does at times become necessary to acquire property interests from private landowners. In doing so, the Authority, in good faith, makes all reasonable and diligent efforts to acquire these property interests through negotiation as is required by N.D.C.C. § 32-15-06.1. However, despite such efforts, there are times these negotiations are not successful, which makes it necessary for our partner entities to acquire these property interests through eminent domain actions.

As this committee is aware, in an eminent domain action, the property owner is to receive and be paid "just compensation." Just compensation is defined as "the fair market value of the property interests sought to be acquired." Just compensation may also include severance damages, which is if the parcel sought to be acquired is part of a larger parcel, and consequential damages, which is if property is not acquired but damaged by the construction of the public improvement. Finally, the law allows the court to award the property owner the costs and attorneys' fees incurred in the eminent domain action.

Senate Bill 2313, as proposed, would increase the amount to be paid for the property interests that must be acquired through an eminent domain action to exceed the fair market value of the property acquired and any applicable damages by 33%. Senate Bill 2313 would essentially set the "floor" for property rights negotiations. This will negatively affect the MFDA and the Fargo-Moorhead Area Diversion. First, this proposed bill will create an obvious financial impact and add stress to the construction of the project, with the resulting financial then becoming a burden on other taxpayers.

Secondly, the proposed bill will also likely create an impediment to effectively negotiating the acquisition of property interests – which are pursued to avoid eminent domain actions – and reaching settlements without eminent domain litigation. This is because even with an offer - made during negotiation that is equal to fair market value and any applicable damages - it is the eminent domain litigation that would result in a 33% multiplier to land acquisition costs, additional litigation expenses and potential stress to the court systems with added eminent domain cases.

While the Fargo-Moorhead Diversion Project has made significant progress in acquiring the property interests required for the construction and operation of the Project, the current project budget and Financial Plan includes over \$200 million left to go for property acquisitions. The increase in costs that would likely result from the passage of SB 2313 would put significant stress on our Financial Plan and would require obtaining additional funds to complete the project.

For these reasons, the MFDA registers its opposition to SB 2313 as proposed.



Tharaldson | Ethanol

Ryan Carter & Brad Kjar
Co-Chief Operating Officers
Tharaldson Ethanol
3549 153rd Ave SE
Casselton, ND 58012

January 25, 2023

The Honorable Dale Patten
Chairman
Senate Energy and Natural Resources Committee
North Dakota Legislature
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

RE: SB 2251 – OPPOSE
SB 2313 – OPPOSE
SB 2212 – OPPOSE
SB 2209 – OPPOSE
SB 2228 – OPPOSE
SB 2317 – OPPOSE
SB 2314 – OPPOSE



Tharaldson | Ethanol

Dear Mr. Chairman and members of the Senate Energy Committee,

Our names are Ryan Carter and Brad Kjar, and we have the privilege of serving as co-Chief Operating Officers for Tharaldson Ethanol in Casselton. As you may know, our facility is the ninth largest ethanol manufacturing facility in the United States and produces a high-octane, clean burning fuel that reduces our nation's dependence on foreign oil, while utilizing our locally grown, renewable agricultural resources. In total, our plant produces 175 million gallons of ethanol every year.

I am writing today to express our opposition to several bills that have been proposed this legislative session, including SB 2251, SB 2313, SB 2212, SB 2209, SB 2228, SB 2317, and SB 2314. These bills, along with others that may be proposed this year, would fundamentally alter North Dakota's regulatory landscape, shift the state away from its traditional pro-business, pro-growth approach to public policy, and prevent North Dakota from continuing to be the national leader in an emerging industry that will benefit our economy long-term.

Tharaldson Ethanol is one of 32 plants across the Midwest that joined Summit Carbon Solutions carbon capture, transportation, and storage project. This multi-billion-dollar private infrastructure investment will allow Tharaldson and Summit's other partners to sell their product at a premium in the growing number of states and countries that have adopted low carbon fuel standards. While opinions may vary on these types of policies, the ability of ethanol manufacturers to access these markets is absolutely vital to ensuring the long-term viability of the industry as a whole. Some renewable fuel leaders in the Midwest have even characterized carbon sequestration as "a matter of life and death" for ethanol manufacturers. We agree.

The ethanol industry contributes \$640 million to North Dakota's GDP every year, supports 10,000 jobs in the state, and, critically, purchases approximately half the corn grown in North Dakota. The stronger the ethanol industry, the better it is for corn growers here in our state and the broader ag economy that is so critical to our way of life. However, the flip side of that coin is true as well. If the industry is not able to access low carbon fuel markets in the years to come, it will undermine the competitiveness of the industry and put all those benefits at risk. And simply put, we believe the bills cited in this testimony would likely produce that outcome.



Tharaldson | Ethanol

For years, existing businesses in North Dakota and businesses considering investing in the state have enjoyed a predictable regulatory environment and the confidence that the rules would not change in the middle of the game. Summit Carbon Solutions developed a business model based on those rules and rightfully should be able to expect the state won't now, two years later, undertake a complete overhaul of the regulations around infrastructure projects.

With more than 30,000 miles of pipeline already in operation in North Dakota and policymakers across the political spectrum supporting efforts to permanently and safely store carbon dioxide, it's important now more than ever that we maintain the state's regulatory process that is rigorous, comprehensive, and has consistently worked for all stakeholder groups. Despite what some may say, landowners are embracing this project. Hundreds of North Dakota landowners have signed easement agreements with Summit Carbon Solutions, accounting for 85% of the area where the company will safely sequester CO2 and more than 58% of the proposed pipeline route, with many additional landowners currently considering agreements.

Thank you for your consideration on these issues and please don't hesitate to contact me if you have any questions.

Sincerely,

Ryan Carter and Brad Kjar

Co-Chief Operating Officers

Tharaldson Ethanol

3549 153rd Ave SE

Casselton, ND 58012

23.0914.01002

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2313

Introduced by

Senators Magrum, Larson

Representative Christensen

1 A BILL for an Act to create and enact a new subsection to section 32-15-22 of the North Dakota
2 Century Code, relating to eminent domain and the assessment of damages.

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

4 **SECTION 1.** A new subsection to section 32-15-22 of the North Dakota Century Code is
5 created and enacted as follows:

6 Following the assessment of damages by the trier of fact, if the property consists of a
7 primary residence situation on five or more acres of surface property the court shall
8 increase the award by ~~thirty-three~~twenty percent and enter the judgment accordingly.
9 The increase may not be considered by the trier of fact in the original assessment of
10 damages.

23.0914.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2313

Introduced by

Senators Magrum, Larson

Representative Christensen

1 A BILL ~~for an Act to create and enact a new subsection to section 32-15-22 of the North Dakota~~
2 ~~Century Code, relating to eminent domain and the assessment of damages~~ for an Act to provide
3 for a legislative management study regarding fair and just compensation and increased
4 damages in eminent domain proceedings.

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

6 ~~SECTION 1. A new subsection to section 32-15-22 of the North Dakota Century Code is~~
7 ~~created and enacted as follows:~~

8 ~~Following the assessment of damages by the trier of fact, the court shall increase the~~
9 ~~award by thirty-three percent and enter the judgment accordingly. The increase may~~
10 ~~not be considered by the trier of fact in the original assessment of damages.~~

11 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FAIR AND JUST COMPENSATION**
12 **IN EMINENT DOMAIN PROCEEDINGS.** During the 2023-24 interim, the legislative
13 management shall consider studying fair and just compensation in all eminent domain
14 proceedings. The study must include the methods and factors used to determine fair and just
15 compensation and whether certain landowners should be entitled to increased damages for
16 certain projects, and if so, the extent of the increased damages.



Testimony in Opposition of
Senate Bill No. 2313
House Energy and Natural Resources
March 17, 2023

TESTIMONY OF

Josh Teigen, Commissioner, ND Department of Commerce

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2313 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on a being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.

Testimony of Troy Coons on behalf of
Northwest Landowners Association
in favor of
SENATE BILL NO. 2313
House Energy and Natural Resources Committee
March 17, 2023

Chairman Porter 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 over 525 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 2313 because market value is often not “just” compensation for a landowner whose land was not for sale. As landowners, we are able to sell our land on the market for market value at most any time we want. Although is it not always the case, just compensation in eminent domain proceedings is most often measured by looking at market values, whether for a residential property or a pipeline easement. When a landowner is being forced to sell his land against his will, it is unfair that the remedy is merely what he would have received if he had chosen to sell his land. The point is that he did not and the land was not for sale, and this should be recognized when we compensate the landowner in an eminent domain proceeding.

This bill initially set out a 33% increase in the market value compensation, and has been converted to a study. We hope you will consider adopting something very similar next session after a study, and we would also ask for you to study laws like Indiana Code section 32-24-4.5-8. This Indiana law is just one example, but for any land taken by eminent domain, it accounts for the concerns I discussed.

For example, for agricultural land taken by eminent domain, it requires payment of 125% of the fair market value of the parcel, or it also allows for the landowner to request the transfer of a parcel of land equal in acreage to that being taken. It also requires “payment of loss incurred in a trade or business” so that the landowner and their livelihood are made whole. This law also requires “payment to the owner equal to 150% of the fair market value” for residential properties as well as relocation costs. These are just a few examples from one state we uncovered in our

research, but we feel it is important for us to take a hard look and get this right, and we hope that a similar bill comes out of the process next session.

We also believe that the most important effect of this legislation would be to reduce the use of eminent domain proceedings as a threat and encourage more settlements and resolutions instead of litigation.

Thank you,

Troy Coons

Northwest Landowners Association

North Dakota Senate

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03/17/23

Good morning, Chairman and committee members.

I sponsored SB2313 because I believe that we should recognize that landowners being forced to sell property are in a different position than landowners that choose to sell. A forced sale can have significant impacts on the ongoing operation beyond just the value of the land. The intent of this bill is to increase the value of just compensation recognizing that landowners can receive market price when they willingly sell land. They should be paid more when the sale is forced.

The bill was unfortunately turned into a study and I ask that this become a shall study and then I respectfully ask you give SB2313 a due pass.