

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1324

Introduced by

Representatives Kading, Schmidt

Senator Sorvaag

1 A BILL for an Act to amend and reenact sections 2-06-08 and 40-22-05, subsection 2 of section  
2 61-16.1-09, and section 61-24.8-06 of the North Dakota Century Code, relating to the exercise  
3 of eminent domain; and to provide a penalty.

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

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

7 **2-06-08. Eminent domain - Penalty.**

8 1. In the acquisition of property by eminent domain proceedings authorized by this  
9 chapter, an airport authority shall proceed in the manner provided by chapter 32-15  
10 and other applicable laws.

11 2. An airport authority may use eminent domain to acquire property acquired by its  
12 current owner by eminent domain proceedings. The authority may enter land to make  
13 surveys and examinations related to eminent domain proceedings as long as doing so  
14 results in no unnecessary damage.

15 3. Notwithstanding the provisions of any other statute, an authority may take possession  
16 of any property to be acquired by eminent domain proceedings at any time after the  
17 commencement of the proceedings. The authority may abandon the proceedings at  
18 any time before final order and decree of the court having jurisdiction of the  
19 proceedings, provided the authority is liable to the owner of the property for any  
20 damage done to the property during possession by the authority.

21 4. Notwithstanding subsection 3, an airport authority may not take possession of any  
22 property until the airport authority has made a deposit under section 32-15-26. If the  
23 deposit is less than ten percent of the fair market value of the property, the airport

1            authority shall pay a penalty of twenty-five percent of the fair market value of the  
2            property to the property owner.

3            5. Except as otherwise provided in section 32-15-32, if the court determines the use of  
4            eminent domain is not authorized under chapter 32-15, the court shall order the airport  
5            authority to pay a penalty equal to fifty percent of the fair market value of the property  
6            plus punitive damages to the property owner. If the property owner's attorney's fees  
7            are less than ten percent of the fair market value of the property, the court shall order  
8            the airport authority to pay the property owner's attorney's fees.

9            6. Notwithstanding any other provision of law, all property taken under this section for  
10           right of way must maintain the same zoning restrictions and property classification in  
11           place before the property was taken.

12           **SECTION 2. AMENDMENT.** Section 40-22-05 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14           **40-22-05. Condemnation of land and rights of way for special improvements - Taking**  
15 **of possession - Trial - Appeal - Vacation of judgment - Penalty.**

16           1. Whenever property required to make any improvement authorized by this chapter is to  
17 be taken by condemnation proceedings, the court, upon request by resolution of the  
18 governing body of the municipality making ~~such~~the improvement, shall call a special  
19 term of court for the trial of the proceedings and may summon a jury for the trial  
20 whenever necessary. The proceedings ~~shall~~must be instituted and prosecuted in  
21 accordance with the provisions of chapter 32-15, except that when the interest sought  
22 to be acquired is a right of way for the opening, laying out, widening, or enlargement of  
23 any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of  
24 any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or  
25 sewage, whether within or without the municipality, the municipality may make an offer  
26 to purchase the right of way and may deposit the amount of the offer with the clerk of  
27 the district court of the county wherein the right of way is located, and may thereupon  
28 take possession of the right of way forthwith. The offer shall be made by resolution of  
29 the governing body of the municipality, a copy of which shall be attached to the  
30 complaint filed with said clerk of court in accordance with section 32-15-18.

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

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

5 7. Upon the failure of the municipality to make payment in accordance with this section,  
6 the judgment in the condemnation proceedings may be vacated.

7 8. If the property to be taken under subsection 1 is a right of way and the deposit is less  
8 than ten percent of the fair market value of the property, the municipality shall pay a  
9 penalty of twenty-five percent of the fair market value of the property to the property  
10 owner.

11 9. Except as otherwise provided in section 32-15-32, if the court determines the taking of  
12 the right of way was not necessary, the court shall order the municipality to pay a  
13 penalty equal to fifty percent of the fair market value of the property to the property  
14 owner. If the property owner's attorney's fees are less than ten percent of the fair  
15 market value of the property, the court shall order the municipality to pay the property  
16 owner's attorney's fees.

17 10. Notwithstanding any other provision of law, all property taken under this section for  
18 right of way must maintain the same zoning restrictions and property classification in  
19 place before the property was taken.

20 **SECTION 3. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota  
21 Century Code is amended and reenacted as follows:

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

23 a. Except as permitted under subdivision b, the board shall comply with title 32 for  
24 the purpose of acquiring and securing by eminent domain any rights, titles,  
25 interests, estates, or easements necessary or proper to carry out the duties  
26 imposed by this chapter, and particularly to acquire the necessary rights in land  
27 for the construction of dams, flood control projects, and other water conservation,  
28 distribution, and supply works of any nature and to permit the flooding of lands,  
29 and to secure the right of access to such dams and other devices and the right of  
30 public access to any waters impounded thereby.

- 1           b. (1) If the interest sought to be acquired is an easement for a right of way for any  
2                   project authorized in this chapter for which federal or state funds have been  
3                   made available, the district may acquire the right of way by quick take  
4                   eminent domain as authorized by section 16 of article I of the Constitution of  
5                   North Dakota, after the district attempts to purchase the easement for the  
6                   right of way by:
- 7                   (a) Conducting informal negotiations for not less than sixty days.
- 8                   (b) If informal negotiations fail, the district shall engage in formal  
9                   negotiations by:
- 10                   [1] Sending the landowner an appraisal and written offer for just  
11                                compensation, which includes a specific description of the exact  
12                                location of the right of way, by certified mail or commercial  
13                                delivery requiring a signed receipt, and receiving the signed  
14                                receipt or documentation of constructive notice.
- 15                   [2] Sending the landowner a written request for a meeting by  
16                                certified mail or commercial delivery requiring a signed receipt if  
17                                there is no agreement regarding compensation or no response to  
18                                the written offer within fifteen days of receipt, and receiving the  
19                                signed receipt or documentation of constructive notice.
- 20                   [3] Sending the landowner a written notice, by certified mail or  
21                                commercial delivery requiring a signed receipt, of intent to take  
22                                possession of the right of way if there is no agreement regarding  
23                                compensation or no response to the written request for a  
24                                meeting within thirty days of receipt, and receiving the signed  
25                                receipt or documentation of constructive notice.
- 26                   (2) Any written communication to the landowner must include contact  
27                                information for responding to the board and a description of the required  
28                                negotiation timeline.
- 29                   (3) A district may not include or utilize any reference to quick take eminent  
30                                domain during negotiations to acquire the necessary easement for a right of  
31                                way. If formal negotiation efforts fail, the district shall request approval from

1 the board of county commissioners of the county in which the right of way is  
2 located to take possession of the right of way by quick take eminent domain.  
3 After receiving the request, the county commissioners shall hold a public  
4 meeting and give the landowner thirty days' notice of the meeting to allow  
5 the landowner to attend. After receiving verification from the district that  
6 there has been no reference or threat of quick take eminent domain by the  
7 district during negotiations, the commissioners shall vote on whether to  
8 approve the taking of the easement for a right of way using quick take  
9 eminent domain. If the county commissioners approve the use of quick take  
10 eminent domain by a majority vote, the district may take immediate  
11 possession of the right of way, but not a blanket easement, if the district files  
12 an affidavit by the chairman of the water resource board which states the  
13 district has fulfilled the required negotiation steps and deposits the amount  
14 of the written offer with the clerk of the district court of the county in which  
15 the right of way is located.

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

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

26 c. If the deposit for property taken under subdivision b is less than ten percent of  
27 the fair market value of the property, the water resource board shall pay a penalty  
28 of twenty-five percent of the fair market value of the property to the property  
29 owner.

30 d. Except as otherwise provided in section 32-15-32, if the court determines the  
31 taking of the right of way was not necessary, the court shall order the water

1           resource board to pay a penalty equal to fifty percent of the fair market value of  
2           the property to the property owner. If the property owner's attorney's fees are less  
3           than ten percent of the fair market value of the property, the court shall order the  
4           water resource board to pay the property owner's attorney's fees.

5           e. Notwithstanding any other provision of law, all property taken under this  
6           subsection for right of way must maintain the same zoning restrictions and  
7           property classification in place before the property was taken.

8           **SECTION 4. AMENDMENT.** Section 61-24.8-06 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **61-24.8-06. Condemnation of land and rights of way for special improvements -**  
11           **Taking of possession - Trial - Appeal - Vacation of judgment - Penalty.**

12           1. When property required to make any improvement authorized by this chapter is to be  
13           taken by condemnation proceedings, the court, upon request by resolution of the  
14           board of the district making the improvement, shall call a special term of court for the  
15           trial of the proceedings and may summon a jury for the trial. The proceedings must be  
16           instituted and prosecuted in accordance with chapter 32-15, except that when the  
17           interest sought to be acquired is a right of way for the laying of any main, pipe, ditch,  
18           canal, aqueduct, or flume for conducting water, whether within or without the district,  
19           the district may make an offer to purchase the right of way and may deposit the  
20           amount of the offer with the clerk of the district court of the county in which the right of  
21           way is located, and may then take possession of the right of way. The offer must be  
22           made by resolution of the board of the district, and a copy of the resolution must be  
23           attached to the complaint filed with the clerk of court in accordance with section  
24           32-15-18.

25           2. The clerk shall immediately notify the owners of the land on which the right of way is  
26           located of the deposit by causing a notice to be appended to the summons when  
27           served and published in the proceedings as provided in the North Dakota Rules of  
28           Civil Procedure stating the amount deposited or agreed in the resolution to be  
29           deposited. The owner may then appeal to the court by filing an answer to the  
30           complaint in the manner provided in the North Dakota Rules of Civil Procedure and  
31           may have a jury trial, unless a jury is waived, to determine the damages. ~~However,~~

1           ~~upon~~Upon due proof of the service of the notice and summons and upon deposit of  
2           the aggregate sum agreed in the resolution, the court without further notice may make  
3           and enter an order as authorized by section 16 of article I of the Constitution of North  
4           Dakota.

5           3. If under laws of the United States proceedings for the acquisition of any right of way  
6           are required to be instituted in or removed to a federal court, the proceedings may be  
7           taken in that court in the same manner and with the same effect as provided in this  
8           section and the clerk of the district court of the county in which the right of way is  
9           located shall perform any and all of the duties set forth in this section if the clerk is  
10          directed to do so by the federal court. The proceedings must be determined as  
11          speedily as practicable.

12          4. An appeal from a judgment in the condemnation proceedings must be taken within  
13          sixty days after the entry of the judgment and appeal must be given preference by the  
14          supreme court over all other civil cases except election contests. No final judgment in  
15          the condemnation proceedings awarding damages to property used by the district for  
16          irrigation or other purposes may be vacated or set aside if the district pays to the  
17          defendant, or into court for the defendant, the amount awarded in cash.

18          5. The district may levy special assessments within the district to pay all or part of the  
19          judgment. To provide funds for the payment of the judgment or for the deposit of the  
20          amount offered for purchase of a right of way, the district may issue bonds on the fund  
21          of the improvement district as provided in section 61-24.8-09 in anticipation of the levy  
22          and collection of special assessments or revenues to be appropriated to the fund in  
23          accordance with this chapter. The bonds may be issued upon or after the  
24          commencement of the condemnation proceedings.

25          6. Upon the failure of the district to make payment in accordance with this section, the  
26          judgment in the condemnation proceedings may be vacated.

27          7. If the property to be taken under subsection 1 is a right of way and the deposit is less  
28          than ten percent of the fair market value of the property, the district shall pay a penalty  
29          of twenty-five percent of the fair market value of the property to the property owner.

30          8. Except as otherwise provided in section 32-15-32, if the court determines the taking of  
31          the right of way was not necessary, the court shall order the district to pay a penalty



- 1           equal to fifty percent of the fair market value of the property to the property owner. If  
2           the property owner's attorney's fees are less than ten percent of the fair market value  
3           of the property, the court shall order the district to pay the property owner's attorney's  
4           fees.
- 5           9. Notwithstanding any other provision of law, all property taken under this section for  
6           right of way must maintain the same zoning restrictions and property classification in  
7           place before the property was taken.