

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2047

Introduced by

Legislative Management

(Water Topics Overview Committee)

1 A BILL for an Act to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota  
2 Century Code, relating to the authority of water resource boards to exercise the power of quick  
3 take eminent domain.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 61-16.1-09 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 2. Exercise the power of eminent domain ~~in the manner provided by~~ as follows:

8 a. Except as permitted under subdivision b, the board shall comply with title 32 for  
9 the purpose of acquiring and securing by eminent domain any rights, titles,  
10 interests, estates, or easements necessary or proper to carry out the duties  
11 imposed by this chapter, and particularly to acquire the necessary rights in land  
12 for the construction of dams, flood control projects, and other water conservation,  
13 distribution, and supply works of any nature and to permit the flooding of lands,  
14 and to secure the right of access to such dams and other devices and the right of  
15 public access to any waters impounded thereby. ~~Provided, however, that when~~

16 b. (1) If the interest sought to be acquired is a right of way for any project  
17 authorized in this chapter for which federal or state funds have been  
18 appropriated, the district, ~~after making a written offer to purchase the right of~~  
19 way and depositing may acquire the right of way by quick take eminent  
20 domain as authorized by section 16 of article I of the Constitution of North  
21 Dakota, after the district attempts to purchase the right of way by:

22 (a) Sending the landowner an appraisal and written offer for just  
23 compensation, which includes a specific description of the exact  
24 location of the right of way, by certified mail or commercial delivery

- 1                    requiring a signed receipt, and receiving the signed receipt or  
2                    documentation of constructive notice.
- 3                    (b) Sending the landowner a written request for a meeting by certified  
4                    mail or commercial delivery requiring a signed receipt if there is no  
5                    agreement regarding compensation or no response to the written offer  
6                    within fifteen days of receipt, and receiving the signed receipt or  
7                    documentation of constructive notice.
- 8                    (c) Sending the landowner a written notice, by certified mail or  
9                    commercial delivery requiring a signed receipt, of intent to take  
10                   possession of the right of way in thirty days if there is no agreement  
11                   regarding compensation or no response to the written request for a  
12                   meeting within thirty days of receipt, and receiving the signed receipt  
13                   or documentation of constructive notice.
- 14                   (2) Any written communication to the landowner must include contact  
15                   information for responding to the board and a description of the required  
16                   negotiation timeline.
- 17                   (3) If negotiation efforts fail, the district shall request approval from the board of  
18                   county commissioners of the county in which the right of way is located to  
19                   take possession of the right of way by quick take eminent domain. After  
20                   receiving the request, the county commissioners shall hold a public meeting  
21                   and give the landowner sufficient notice of the meeting to allow the  
22                   landowner to attend. If the county commissioners approve the use of quick  
23                   take eminent domain by a majority vote, the district may take immediate  
24                   possession of the right of way, but not a blanket easement, if the district files  
25                   an affidavit by the chairman of the water resource board which states the  
26                   district has fulfilled the required negotiation steps and deposits the amount  
27                   of the written offer with the clerk of the district court of the county wherein  
28                   which the right of way is located, may thereupon take immediate possession  
29                   of the right of way, as authorized by section 16 of article I of the Constitution  
30                   of North Dakota.

- 1                   (4) Within thirty days after notice has been given in writing to the landowner by  
2                   the clerk of the district court that a deposit has been made for the taking of a  
3                   right of way as authorized in this subsection, the owner of the property taken  
4                   may appeal to the district court by serving a notice of appeal upon the  
5                   acquiring agency, and the matter must be tried at the next regular or special  
6                   term of court with a jury unless a jury be waived, in the manner prescribed  
7                   for trials under chapter 32-15.
- 8                   (5) If ownership of a right of way has not terminated, ownership of a right of way  
9                   acquired under this subdivision terminates automatically when the district no  
10                   longer needs the right of way for the purpose for which it was acquired.