

**FIRST ENGROSSMENT
with House Amendments
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 an easement for a right of way for any
17 project authorized in this chapter for which federal or state funds have been
18 appropriated made available, the district, after making a written offer to
19 purchase the right of way and depositing may acquire the right of way by
20 quick take eminent domain as authorized by section 16 of article I of the
21 Constitution of North Dakota, after the district attempts to purchase the
22 easement for the right of way by:

23 (a) Conducting informal negotiations for not less than sixty days.

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

- 1 approve the taking of the easement for a right of way using quick take
2 eminent domain. If the county commissioners approve the use of quick take
3 eminent domain by a majority vote, the district may take immediate
4 possession of the right of way, but not a blanket easement, if the district files
5 an affidavit by the chairman of the water resource board which states the
6 district has fulfilled the required negotiation steps and deposits the amount
7 of the written offer with the clerk of the district court of the county wherein
8 which the right of way is located, ~~may thereupon take immediate possession~~
9 ~~of the right of way, as authorized by section 16 of article I of the Constitution~~
10 ~~of North Dakota.~~
- 11 (4) Within thirty days after notice has been given in writing to the landowner by
12 the clerk of the district court that a deposit has been made for the taking of a
13 right of way as authorized in this subsection, the owner of the property taken
14 may appeal to the district court by serving a notice of appeal upon the
15 acquiring agency, and the matter must be tried at the next regular or special
16 term of court with a jury unless a jury be waived, in the manner prescribed
17 for trials under chapter 32-15.
- 18 (5) If ownership of a right of way has not terminated, ownership of a right of way
19 acquired under this subdivision terminates automatically when the district no
20 longer needs the right of way for the purpose for which it was acquired.