

# MICROFILM DIVIDER

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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

22/4

2007 SENATE JUDICIARY

SB 2214

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2214**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1806

Committee Clerk Signature

*Mina L. Salberg*

**Minutes:** Relating to the use of eminent domain for urban renewal.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

## **Testimony In Support of Bill:**

**Sen. Lyson**, Dist. #31, Introduced the bill. This is the bill to replace the bill we killed

**Sen. Heitkamp**, Dis. #26 (meter 1:32) Reviewed the bill, discussing the history of it.

**Heidi, Heitkamp**, appearing on behalf of self and a sponsor on the committee of measure 2. reviewed the bill further (meter 3:52). We are in agreement to the "quick take" amendment you will be provided later. This bill identifies every code in our ND laws that eminent domain effects. Referred to line 7, 32-15-01 is what the majority of this bill is about. (meter 6:00) Ms. Heitkamp discussed the bill in the regard of Jury Trials and quick take provision.

Urban Renewal (meter 8:06) on page 14 of bill sub sec. 3 was also reviewed.

**Fancis G. Ziegler**, P.E. Director (meter 15:08) Gave Testimony – Att. #1a. and proposed Amendment – Att. #1b.

**Terry Traynor**, Assoc. of Counties (meter 15:08) we agree with D.O.T. our concern is Sec 14 24.05-09, the provision for county roads and our short construction season, we request the above amendment to be used in this same section.

**Testimony in Opposition of the Bill:**

None

**Testimony Neutral to the Bill:**

None

**Senator David Nething**, Chairman closed the hearing.

**Sen. Lyson** made the motion to Do Pass the two amendments and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

**Sen. Nelson** made the motion to Do Pass SB 2214 with the two amendments and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

**Senator David Nething**, Chairman closed the hearing.

Att 1b.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2214

Page 5, line 14, replace "subject to chapter 32-15." with "subject to section 32-15-01"

Page 7, line 18, replace "subject to chapter 32-15." with "subject to section 32-15-01"

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2214: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2214 was placed on the Sixth order on the calendar.**

Page 5, line 14, replace "chapter 32-15" with "section 32-15-01"

Page 6, line 5, replace "chapter 32-15" with "section 32-15-01"

Page 7, line 18, replace "chapter 32-15" with "section 32-15-01"

Renumber accordingly



2007 HOUSE JUDICIARY

SB 2214

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2214

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4052

Committee Clerk Signature

*A. Amrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2214.

**Sen. Stan Lyson:** Sponsor and explained the bill. It came out of a study resolution on eminent domain. The initiative was on the ballot. When we started the committee, we found out that we have a constitutional position that says the legislature cannot interfere with an initiated measure. We continued with the study but we did not release anything other than people could get on and read the minutes of our meetings. We didn't release anything further because of that. I directed our attorneys to draw up two bills. One bill would be if the measure failed and one if it passed. It passed and this bill is in front of you now. This bill mirrors the measure that was passed by the citizens of ND. It also cleans up all the rest of the Century Code portions in there on eminent domain. It simply is that. It is pretty much the exact wording that the initiated measure had and the other portions in there were clean up.

**Rep. Griffin:** What were the changes made in the Senate.

**Sen. Lyson:** The first Senate bill was the wrong bill. We brought in the right bill, and that amended the bill.

**Chairman DeKrey:** Do you need an emergency clause on that.

**Sen. Lyson:** If there isn't one on there, it should be on there. I thought that was one of the amendments that we did. We talked about that and it was supposed to be on there.

**Rep. Charging:** I was also involved in these meetings. Even though we heard all the testimony on it, we weren't allowed to share that information with the public. There were concerns from the Department of Transportation, etc. Is there anything this can do to help those concerns that were brought forward to the committee.

**Sen. Lyson:** If you recall, I told many of those people at the committee, what the constitution said about us interfering with the initiated measure. They had the opportunity themselves to go and release information that would in their favor. They chose not to do this and I guess, to me, it wasn't worth it to them to do that. I think they were pretty well covered, especially the electrical and highways, in this bill. I think it turned out and what you have in front of you is what the public voted on.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Ron Henke, Office of Project Development Director, ND DOT:** (see attached testimony).

**Rep. Meyer:** Where is that language in the bill.

**Ron Henke:** The language we are looking at is in section 13, and 15, and specifically we use the power of eminent domain under NDCC 24 and it only subjects us to section 32-15-01 of this bill, which is section 16. So we get eminent domain for property under 13 and 15 and that refers us only to section 16.

**Rep. Charging:** You might recall this in our committee, there was one point that was never answered, I believe. For example, if one of the ethanol plants, a roadway was built to the plant, it all falls under this appropriately, until they build a security fence around it, and once the road is gated, it becomes private.

**Ron Henke:** The DOT only takes care of state routes. If that is not a state route, that would not fall under our jurisdiction. If it is private, it is something else.

**Rep. Charging:** What if it was your DOT lot that was never answered. If the State enclosed that, it's not public anymore.

**Ron Henke:** I don't have an answer to that question. I think you are referring to one of our maintenance yards if we fenced that off.

**Rep. Charging:** Would it need a constitutional amendment, would we have any recourse. Since this was passed by the people.

**Rep. Kretschmar:** The courts would have to look at that if there were ever a lawsuit filed. It seems to me that the Highway Dept. could condemn property for their equipment.

**Rep. Koppelman:** When DOT needs to condemn a parcel for construction of a roadway, is there any requirement that you, can you take a portion of a parcel or if it's a lot that is a certain size, and the part you need arguably leaves the rest useless. How does that work. Do you sell it back.

**Ron Henke:** Yes we can take a sliver of land, we can take almost any portion we want, but if there is a portion left that is called unusable, we will purchase the whole property.

**Rep. Koppelman:** What do you do with that unusable piece.

**Ron Henke:** We always try to sell back whatever we can. We give first option to the landowner that we purchased that from. Sometimes we have had cities ask us to deed it to them because they want to use it for a park area. It just depends on where that's at.

**Rep. Koppelman:** Have you looked at the constitutional amendment with that question in mind, and whether you can still sell back.

**Ron Henke:** No we haven't.

**Rep. Koppelman:** I would encourage you to do that, because I think it says that the land cannot be returned to private use. You may have to give it to the city for a park.

**Chairman DeKrey:** A specific example given to us in the committee was up in Grand Forks when they had the flood, the government was buying lots down by the river. Then they combined some lots and they made one decent lot out of it, and they had a little chunk of land left over and the question was could they again sell that back to private entity, and the testimony was that they couldn't do that.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2214

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4124

Committee Clerk Signature *W Penrose*

Minutes:

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2214.

**Rep. Meyer:** I move to amend the bill to add the emergency clause.

**Rep. Dahl:** Second.

**Chairman DeKrey:** We will take a voice vote. Motion carried.

**Rep. Meyer:** Is that a substantive change in section 15-01 with the DOT, it does allow the highway department to continue with its current process. Isn't that the problem now. They testified that there wasn't any substantive changes, and it does allow them to condemn properties the same way they did under the old eminent domain law.

**Chairman DeKrey:** The reason this was changed was for economic development. All the testimony received during the interim, was that they were concerned because if you put in a road or power line, or a spin off on that, there is probably going to be economic development, so that wouldn't stop them because that wasn't their main reason for taking the land. It couldn't be the main reason.

**Rep. Koppelman:** Are you talking about the bottom of page 7 and top of page 8.

**Rep. Meyer:** I was talking about the language inserted referencing when they can do that.

**Chairman DeKrey:** When this bill was finished it was given to Curly Haugland and Heidi Heitkamp and they both said it was a good bill.

**Rep. Meyer:** I move a Do Pass as amended.

**Rep. Koppelman:** Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kretschmar

Date: 2/28/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2214

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Meyer Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

SB 2214, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2214 was placed on the Sixth order on the calendar.

Page 1, line 14, remove "and"

Page 1, line 15, after "renewal" insert "; and to declare an emergency"

Page 21, after line 26, insert:

**"SECTION 47. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly

2007 TESTIMONY

SB 2214

AH #1a

SENATE JUDICIARY COMMITTEE

January 24, 2007

North Dakota Department of Transportation  
Francis G. Ziegler, P.E., Director

SB 2214

Good afternoon, Mr. Chairman and Members of the Committee. I'm Francis G. Ziegler, Director of the North Dakota Department of Transportation and I am here today to discuss the proposed changes to the North Dakota Century Code relating to the exercise of the power of eminent domain.

First, let me be clear that the department has no problem with section 16 of SB 2214 and the proposed changes to NDCC section 32-15-01 regarding the taking of private property. However, we believe the new language proposed in sections 13 and 15 of this bill may create some confusion regarding which provisions apply in particular condemnation cases involving highway right of way. Sections 13 and 15 of the bill would appear to mandate the department's condemnation authority may only be used "subject to chapter 32-15."

NDCC chapter 32-15 specifies the *general* state law provisions for the use of condemnation which apply to all condemning authorities. The department however, has a number of *specific* state law provisions in Title 24 it uses in addition to the general provisions regarding the acquisition and condemnation of right of way. Typically, these specific statutes would supersede the general provisions of chapter 32-15. Article 1, Section 16 of the North Dakota Constitution and NDCC sections 24-01-22, 24-01-22.1 and 24-01-32 specify that the department acquires "fee title" (ownership and control) and has possession of property for right of way 30 days after making a deposit in court of the compensation due the landowner. We call this the "quick take" process.

However, sections 32-15-18, 32-15-27 and 32-15-29, provide that a civil "complaint" must be filed to initiate any condemnation action and that possession of the property does not occur until the court "authorizes (the condemner) to take possession of and use the property." Furthermore, Section 32-15-03.2 specifies that the state may acquire only an "easement" interest as opposed to title and the ownership interest the department acquires when it purchases right of way.

There are a number of situations in which landowners involved in small takings, only a few hundred to a few thousand dollars, are not interested in a complicated civil court action. We have had cases that involve acquiring easements from railroads that had no problem with the taking, but the timing and circumstances prevented a negotiated settlement before the department had to certify possession of the right of way. Sometimes it is difficult to locate landowners for responses in an acceptable amount of

time. Recently one landowner was out of the country and unable to be reached in a timely manner and in cases like this condemnation action is necessary to secure the parcel. Many of these landowners have no interest in participating in a court action and have no problem negotiating a settlement or accepting the amount deposited. In some cases, condemning the parcel is necessary solely to clear up title issues. In a recent case, all of the owners of record were deceased and the estates of these owners had no interest in a court action. In another recent case, the landowner wanted the department to condemn his small parcel of land because of a tax issue, but there was no interest in a court action.

We are concerned that if NDCC sections 24-01-18 and 24-17-09 were changed as stated, all of the general provisions in chapter 32-15 discussed above may be applied by the courts rather than the department's more specific condemnation provisions. We believe that if the department has to follow all of the provisions in chapter 32-15, it would create an additional workload on the court system, create unnecessary delays in our project development process, and could unnecessarily complicate our right-of-way acquisition process.

To assure the department can continue with its current procedures, we respectfully request an amendment (see attachment) to eliminate the reference to chapter 32-15 and replace it with a specific reference to Section 32-15-01. This reference would specifically require the department to comply with the new provisions in section 16 of this bill, but would continue to allow the process that the DOT has used for over 50 years.

This concludes my testimony. Mr. Chairman, I would be happy to answer any questions. Thank you.

**HOUSE JUDICIARY COMMITTEE**

**February 28, 2007**

**North Dakota Department of Transportation  
Ronald J. Henke, P.E., Office of Project Development, Director**

**Engrossed SB 2214**

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Good morning Mr. Chairman and members of the committee. I'm Ron Henke, Office of Project Development Director, for the North Dakota Department of Transportation. I am here to testify in support of the Engrossed SB 2214.

The Department only condemns property necessary to make way for new or reconstructed roads or other road-related improvements when negotiations do not result in an agreement with the landowner. The language proposed in Engrossed SB 2214 allows the Department to continue with its current process, which has worked for all parties involved, and so we support Engrossed SB 2214.

This concludes my testimony. Mr. Chairman, I would be happy to answer any questions. Thank you.