

19.0553.02000

FISCAL NOTE STATEMENT

House Bill or Resolution No. HB 1184

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

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2019 HOUSE JUDICIARY

HB 1184

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1184
1/22/2019
31209

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

Relating to appeals related to acquiring a right of way through the use of quick take eminent domain.

Minutes:

Attachments 1-12

Chairman Koppelman: Opened the hearing on HB 1184.

Rep. Kading: Introduced the bill. Read testimony. (Attachment #1) 1:00-5:55)

Rep. Hanson: What is the typical timeline with an eminent domain and quick take?

Rep. Kading: Quick take can be a week. Traditional eminent domain can take anywhere from six months to two years.

Rep. Hanson: I thought quick take could be six to eight months. What kind of impact would this have on current water projects in North Dakota, in terms of the financial impact and the time line impact?

Rep. Kading: A lot of projects are planned years ahead.

Chairman K. Koppelman: We heard a bill yesterday as well. You said in these cases there is no chance to get the property back. Yesterday we heard that when it occurs and the court does hear the case if the finding is for the landowner that the taking entity cannot take that property, then they be subject to damages. They have to return the property to its original form. Which is it?

Rep. Kading: Quick take is used for different types of easements.

Rep. Bob Paulson: Who gets to determine the negotiations have failed?

Rep. Kading: The statute requires a level of good faith negotiations.

Chairman K. Koppelman: The good faith negotiations take place prior to the quick take?

Rep. Kading: Yes, that is correct.

Rep. McWilliams: When did quick take become law?

Rep. Kading: Quick take came into effect in the 50's. It was to help some utility companies' easements on certain properties.

Rep. McWilliams: Prior to that, the process was a traditional eminent domain process?

Rep. Kading: I don't have the full history on the ins and outs on the legislative history.

Chairman K. Koppelman: The arguments we heard against removing it is that these projects are large and you could have one individual hold up the project for a long time. What is the proper balance there?

Rep. Kading: We in government have to provide an individual a day in court.

Justin Gawrylow, ND Watchdog Network: (Attachment #2) 13:00-15:00

Paul Henderson, Cavalier County Farmer: (Attachment #3) 15:33-21:43 This bill restores private property to the landowner. Discussed eminent domain statutes and went over the bill. Five years ago on my own farm I had a request for an easement. I was not happy with the offer and I refused to sign the easement. My neighbor across the road did sign the offer and they went on his land. I would ask for a do pass on this bill.

Chairman K. Koppelman: If quick take has been abused do you see a need for it at all. Is there a middle ground so it can still be a tool?

Paul Henderson: Without changing this process I don't think we are going to see much change on the ground. This is a private property taking forever.

Chairman K. Koppelman: Do you see a difference in taking the land and it no longer belongs to you and if something like a pipeline goes through and the surface of the land is still usable and the land is still yours?

Paul Henderson: There is a difference but most of those easements are for perpetuity. That to me is a long time.

Representative Jones: How often is the quick take actually used?

Paul Henderson: In the case of my friend who had this problem, I don't think it is rare. I have seen it used several times.

Pat Wheeler: I am totally against quick take. Western Area Water Supply has used this. We don't know how often that has been used, but they have used it. Quick take was to be used only for rural water users.

John Ertelt, Oriska, ND: (Attachment #4) Example of a quick take. Discussed the misuse of quick take that is happening. Need to have due process so the landowner gets a fair shake.

Opposition:

Mark Gaydos, ND DOT: (Attachment #5) Read testimony. (36:13- 39:50)

Rep. Paur: Most of these projects require an Environmental Assessment?

Mark Gaydos: It takes from 15-24 months.

Rep. Paur: A lot of these projects are many years in the future.

Mark Gaydos: Right now as we acquire the properties and look to the future we do not have funding for all these projects. As we are doing the environmental projects some of the funds are not available.

Rep. Hanson: A landowner says they do not have their day in court. Describe the due process that you use?

Mark Gaydos: As we go through an EA process. Many times property owners along the project voice opinions of where they would like it to go.

Rep. Hanson: You talked about the eminent domain going to trial. If a construction project would be held up what kind of financial implications could that have to the taxpayers?

Mark Gaydos: We hold the money in place until that action is complete.

Rep. Hanson: Does it have a greater financial impact to the state.

Mark Gaydos: Sometimes it can be much larger. A number of things can increase the project cost.

Rep. McWilliams: Were you involved in state water projects prior to 1989? How was that authority used prior to 1989? Quick take has more to do with timing of funding than anything else?

Mark Gaydos: I believe timing is a primary issue.

Rep. McWilliams: If there was a provision in law to provide for the due process and the timing of funding.

Mark Gaydos: I am not familiar with the water projects at all.

Chairman K. Koppelman: How has quick take worked with DOT? Have there been instances where the decisions have been reversed.

Mark Gaydos: I do have experience in Jamestown on main avenue.

Chairman K. Koppelman: How do you undo a quick take action?

Mark Gaydos: We terminated the bid we had with the contractor.

Chairman K. Koppelman: It could occur where a quick take action is taken to court and overturned.

Mark Gaydos: Yes

Rep. Rick Becker: Went over his testimony. Who does the review of the appraisal?

Mark Gaydos: DOT uses a certified appraiser.

Rep. Becker: The DOT determines if their own offer is just.

Mark Gaydos: Yes, that is correct.

Rep. Magrum: How many quick take actions do you do per year and what is the average savings for the state of North Dakota?

Mark Gaydos: Average year less than 3 quick take actions.

Rep. Magrum: What is the savings per project?

Mark Gaydos: I don't know if I would say there was any savings. It is our standard procedure to follow that way.

Jack Dwyer, ND Water Users Association, ND Water Resource Districts: (Attachment #6) (54:00-59:40)

Rep. McWilliams: In your testimony you referred to Century Code, could you talk through the process by which water supply projects were permitted?

Jack Dwyer: My testimony is directed to water resource districts.

Chairman K. Koppelman: In your testimony you outline a process you use. Are you aware of abuses of the process and how might it be reined in and get rid of the process completely?

Jack Dwyer: IN 2017 the quick take process was changed. I am not aware of any abuses of the process in my experience.

Rep. Rick Becker: Quick take can only be used for easements. What percentage of the projects you are talking about do not have federal or state funding.

Jack Dwyer: I am not talking about any project in particular. I have no percentage or breakdown. Water projects that don't qualify for state funding, do not have the power

to use quick take. The projects that have state funding do have that ability for easement interest only. I have no percentage or breakdown.

Rep. Rick Becker: Going through quick take is a process for everyone.

Rep. Magrum: How many times a year does rural water use quick take and what is the savings?

Jack Dwyer: I don't have those answers for rural water.

Rep. Hanson: What would the overall costs be if quick take was eliminated

Jack Dwyer: I have no cost information.

Rep. Simons: I am hearing from constituents and it is many of them.

Jack Dwyer: I provide legal counsel with several water projects and we treat landowners with respect.

Chairman K. Koppelman: We heard one entity of misusing the system.

Jack Dwyer: That is an issue that is isolated to NW North Dakota. That is not something I deal with in my work.

Ryan Ackerman, Souris River Joint Water Resource Board: (Attachment #7)
(1:10:09-1:11:42) Late 2011 Souris River has been acquiring property but have not used eminent domain or quick take at all.

Vice Chairman Karls: I had a call from a friend near Minot and how difficult it is to obtain an easement for a drain. Is that what you find?

Ryan Ackerman: Yes, we use it only when necessary.

Rep. Jones: How much cost savings is there to these projects in quick take and eminent domain?

Ryan Ackerman: Any delay in project schedule will increase project costs. If we can't reach a solution with the railroads we have analyzed the cost for that. A billion dollar project 2.8% inflation, so that is 28 million dollars a year. If we can't reach a solution with the railroads, and we lose some our tools, we would have to use a different route.

John Olson, City of Fargo: (Attachment #8) prepared by **Brenda Derrig**. Discussed a Fargo project so you can follow that scenario. (1:17:25 – 1:19:50)

Chairman K. Koppelman: This seems to imply the landowners can take immediate action? Are they aware of that?

John Olson: I don't know.

Rep. Rick Becker: The time line is determined by the city itself, so it really becomes just a move point.

John Olson: I do not disagree with that. If eminent domain is required to take the property, then I think it is appropriate to ask that question up front.

Mathew Remyse, President of the Airport Assoc. of ND: (Attachment #9)
(1:22:36 - 1:24:50)

Chairman K. Koppelman: Funding seems to be a concern. Are you saying the federal government requires you to use the quick take method or to have the tool available to act quickly to access those funds?

Mathew Remyse: The quick take method allows airports to take control of the land when federal funding becomes available. It is not a requirement of the federal government. It is a requirement that we have control of the land and the quick take method allows us to do that.

Chairman K. Koppelman: Have you run into a lot of resistance?

Mathew Remyse: I believe airports are doing due diligence to try to negotiate. This is a last resort method.

Bill Wocken: representing North Dakota League of Cities. (Attachment # 10 & 11)
(1:26:44 - 1:29:10)

Rep. Rick Becker: Section 16 regarding the constitution; how does that work?

Bill Wocken: I am not legally trained, so I will not fall into that.

Kevin Freije, Northwest Area Water Supply, Southwest Pipeline Project: (Attachment #12) (1:30:53 – 1:3 Don't use quick take. Budget is set by the legislature. We have a given amount.

Rep. McWilliams: How long have you worked for NAWS?

Kevin Freije: 2009 I have been working there. I have been in court by this. I have been in court on this. Quick take can be used on any project.

Erick Volk, ND Rural Water: Our projects are in that 61.35 statute. We only use easements for pipelines. Our projects were started as co-ops in the 70s. Some of the negatives affects would be some people not getting water.

Linda Svihovec, ND Association of Counties: Opposed to the bill. It is really used by county commissioners but they feel it is a good negotiating tool.

Chairman K. Koppelman: We heard that county commissioners were not able to use

quick take or threaten the use of quick take in a negotiation and you just indicated that is a valuable negotiating tool. Can you explain that?

Linda Svihovec: You got me! We used one quick take action in thirty years. It is a tool available.

Phil Murphy, Soy Bean Growers of ND: What you have here it was hammered out in 2017 and passed. This process of quick take is a process that has been going on for a long time.

Rep. Simons: We are a republic; not a democracy. We need to recognize anyone with concerns with a property right.

Phil Murphy: We are a republic and I taught civics and history for 36 years, I would agree with the republic at any rate.

Chairman K. Koppelman: How many of these alleged abuses have occurred in the last year and a half?

Phil Murphy: I don't know how well it has been tested. I do know that this would place a lot of drainage in farmers cases, it would extend the timeline quite a bit.

Neutral: None

Closed

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1184
2/12/2019
Recording Job# 32511

Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Sheri Lewis

Explanation or reason for introduction of bill/resolution:

Relating to appeals related to acquiring a right of way through the use of quick take eminent domain.

Minutes:

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Chairman Roers Jones: Opened the discussion on HB1184.

Present: Rep. Roers Jones, Chairman; Rep. Jones and Rep. Rick Becker

Rep. Jones: Explained the bill.

Rep. Roers Jones: I am strongly in favor of killing this bill. It's a very important tool for the projects that we have coming up in our area. There probably is well documented circumstances of notice being given.

Rep. Rick Becker: What is it we should do with this bill?

Rep. Roers Jones: Maybe we go away and come back to see if there is a middle ground can be obtained.

Rep. Jones: We still have quick take process in law. I am going to stay firm on this bill.

Chairman Roers Jones: Recessed the discussion.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1184
2/13/2019
Recording Job# 32636

Subcommittee
 Conference Committee

Committee Clerk: DeLores Shimek by Sheri Lewis
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Explanation or reason for introduction of bill/resolution:

Relating to appeals related to acquiring a right of way through the use of quick take eminent domain.

Minutes:

Chairman Roers Jones: Opened the discussion on HB1184.

Present: Rep. Roers Jones, Chairman; Rep. Jones and Rep. Rick Becker

Rep. Roers Jones, Chairman: Last session we did make some significant changes to quick take process. The stories that you're hearing about, are they from more than two years ago? I think a lot of the issues that we're trying to resolve by getting rid of the quick take process may have been resolved last session with the bill that implemented a lot of changes and specific processes for notices. Are you familiar with those changes?

Rep. Jones: The incidents that we were working with are from before two years ago. I would need to understand what changed two years ago to see how much it affects it. I think I made it clear that I wanted to get rid of the quick take process across the state. I've had several conversations with people that are concerned with that approach because it will adversely affect construction projects across the state; and it's really not right to penalize everybody for a few bad actors.

Rep. Roers Jones: Discussed the changes that occurred two years ago.

(4:12) Rep. Roers Jones: Since that has gone into effect do we have any evidence that the problems are ongoing?

Rep. Jones: No we don't have any evidence that the problem is ongoing. I read through those steps in the bill before us that were struck out. Those particular criteria do resolve the problems that we were hearing about.

Rep. Rick Becker: SB2047 from the 2017 session says eminent domain follows title 32; which is the standard eminent domain; except for subsection B, when the interest sought is

to be for an easement, federal or state funds have been made available. Anything other than an easement wouldn't fall under the parameters of this. Correct?

Rep. Roers Jones: I know the process was limited initially to the water resource districts; because they are not an elected body. I was not aware it was only for easements. Maybe if there was a process to share information that makes them aware of their rights? Maybe this would be a means to assist them.

Rep. Jones: I would like to add a penalty paragraph in this section that specifically says what they have to do. I would like to have it state if this process is not followed by an organization, and there's a finding by a court or by the agency or commission specifically talking about the state water commission; that that organization forfeits their right to us quick take.

Rep. Rick Becker: It sounds like the steps we passed two years ago; but it is limited to easements and water resource boards. What about all the stuff that falls outside of easements by water resource boards?

Rep. Jones: If we can come up with a paragraph that works well we can add that in other places after the condemnation section and anywhere else in this section where that same thing would apply to other types of quick take that are taken. I think it is appropriate to have specific wording that says if you don't follow these steps, you will forfeit it and pay triple damages to anyone that is injured in the process.

Rep. Roers Jones: We have the protections already built into the process for the landowners. I think a lot of this can be resolved by providing simple education for the landowners about the process; about what their rights are throughout the process.

Rep. Jones: The process doesn't work. I think they will not do it. I want something specific in this bill. Either I want to move it forward so we kill the quick take for everyone in the state or something specific that says if in the process of using quick take; an organization abuses it and doesn't follow these steps, that they forfeit the right to use quick take.

Inaudible recording 15:08 to 15:14

Rep Jones: Explained the section of the bill being discussed.

Rep. Roers Jones: I don't know if I would be comfortable removing quick take; but what about a penalty or fine? What if they have not followed the process; who administers something like this? There are so many types of entities that can use this and they're all overseen by different groups.

Rep. Jones: It would be whoever it effects on the easement or quick take. We are not crippling these people completely. Quick take is a special privilege to assist them in getting their construction done quicker; they still have eminent domain proceedings that they can go through. For those people who would abuse this I want it shut down. I think the only way to stop this is put it right into a bill.

Rep. Roers Jones: We are talking about something that happened before this new process was issued. We've changed the process in response to your concerns. We are talking about tax payers being affected by this.

Rep. Jones: Abusive government, abuse to our citizens is not easy to detect and it's not easy to find. A few lines in this legislation will prevent this from happening. If there's no abuse, there's no ill effect to the tax payers or projects moving forward. The only time there would be a detrimental effect to those people is if they had not followed this process.

Rep. Rick Becker: Are you saying you support the water resource board so that should be expanded to all forms of quick take?

Rep. Roers Jones: The abuses that Rep. Jones is referring to were limited to water resource boards. I don't know that we need to create a punishment or solution to an issue that hasn't been demonstrated.

Rep. Rick Becker: What's the entity that's taking the properties that we heard about in Fargo?

Rep. Roers Jones: I believe it's the Cass Water Resource District.

Rep. Jones: That's not an easement that's taking the property away.

Rep. Roers Jones: I don't know the answer to that. There certainly are easements being taken.

Rep. Jones: I think we should have a clause that this applies to any quick take action in North Dakota.

Rep. Jones: Made a motion to make an amendment.

No Second was made.

Chairman Roers Jones: Closed the discussion.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1184
2/18/2019
Recording Job# 32871

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek by Sheri Lewis

Explanation or reason for introduction of bill/resolution:

Relating to appeals related to acquiring a right of way through the use of quick take eminent domain.

Minutes:

Attachment 1

Chairman Koppelman: Opened the meeting on HB1184.

Rep. Jones: See attachment 1.

Chairman K. Koppelman: So the quick take would become not so quick take.

Rep. Jones: It takes the option of quick take away from an organization that abuses it.

Chairman K. Koppelman: How does it change the actual process? Does it just make it clearer or does it put more impediments in the path?

Rep. Jones: The process is identical. We're putting it back so that the work that was done last session stays in place and it targets only those that substantially don't follow the process.

Rep. Jones continued with his explanation.

Chairman K. Koppelman: Which sections would deal with water districts specifically and which ones would deal with entities that have eminent domain authority?

Rep. Jones: Section 32 deals with the water and 61.16 deals with the others.

Rep. Roers Jones: That was the question I wanted to ask. Last session we created a specific process for water resource districts and that is because they have an unelected board. It has been in place two years now and there hasn't been any new indications for failure to follow that procedure. I want to make sure that we are clarifying and that this not so quick that the process is not being applied to the entities that it was never intended to be applied. I have concerns with the amendment is that this is a one strike and you're out for

10 years. I think there are instances where people make mistakes or situations where people differ on their information. I think the 10 year lock out period is excessive. My thought would be that the legislature authorizes when an entity can use quick take; also when we recognize a problem with the water resources districts applications of the quick take we changed the process. If an entity uses their quick take process improperly; then they should be locked out from using quick take until the next legislative session.

Chairman K. Koppelman: Very good points.

Rep. Roers Jones: I have a problem with the bill the way it is written punishing the many for the sins of a few.

Rep. Jones: Made a motion to move amendment 19.0553.01002.

Rep. Hanson: Seconded the motion.

Rep. Rick Becker: So in section 1 you took the process that we did for the water resource districts and you apply to state agencies and political subdivisions. Correct?

Rep. Jones: No, my intention was to make the more onerous quick take apply to water districts, the unelected boards specifically; and to make the same penalty apply to cities, counties and state agencies to whatever process they have in place. If they don't follow their process, then taking it away for 10 years apply to them and the triple damages apply to them.

Rep. Rick Becker: The way I read it, it's very different from what your intention was. We've taken the language that was for the water resources and applied it to local and state agencies; and in section 2 you add the damages.

Rep. Paur: I thought quick take for the water districts was supposed to be easier than the other quick take. On page 2 number 7, is person the correct term to use? Is a water district a person?

Chairman K. Koppelman: Yes. Person can apply to any entity, organization, business, political subdivision, or government; individual is the term you want when talking about a human being.

Rep. Jones continued with his explanation.

Chairman K. Koppelman: You are saying there is nothing in current law that even gives political subdivisions the right to use quick take?

Rep. Jones: The constitution gives them the right to use the quick take but they have to apply and get permission to use it. No one has written down a process to follow except for the water districts in last sessions efforts.

Rep. Jones continued with his explanation.

Chairman K. Koppelman: Quick take was allowed constitutionally and the original bill sought to take it away; we can't do that statutorily anyway.

Rep. McWilliams: In the 1950's there was a constitutional clause put in that gave the state the authority to use quick take. In the 1980's we had to statutorily put it in that gave the state the authority to use quick take. If we took this away, it still exists in the constitution because it's something the legislative body can give permission to do or take away.

Chairman K. Koppelman: There's nothing statutorily giving the political subdivisions the authority to use it right now; but there is something statutorily giving water districts the right to use it.

Rep. McWilliams: My understanding is because we have a process lined out; we thereby give the authority to do it. We wouldn't offer a process to do it if we didn't expressly give the authority to do it.

Chairman K. Koppelman: The concern I have is that it would appear to me, if we adopt the amendment as it is, unintentionally subsection 7 and 8 would put these penalties into effect for all political subdivisions using it. If we were to get rid of 7 and 8; but leave section 2, would that accomplish what you're trying to achieve?

Rep. Jones: That would give a written process that everyone would have to follow. If you struck 7 and 8 out of section 32, that left section 2, then it would make the penalties apply just to the water boards.

Chairman K. Koppelman: Political subdivisions would have the process if you eliminated subsection 7 and 8; they wouldn't have the enhanced penalty for misuse, but water districts would have that enhanced penalty.

Rep. Roers Jones: Applying the process that was created for the water resource boards; it's not only political subdivisions, it's used by DOT and other entities, is objectionable to me and we'll get a lot of negative feedback from those entities. This process was created to be more onerous for this particular group because they have an unelected board; whereas the other political subdivisions that are using it; each has a prescribed process that they're following.

Chairman K. Koppelman: It sounds like if they're both correct, that the constitution authorizes the use of quick take; but it has to be legislatively granted. If it's spelled out in statute, this may not be the right process. If we haven't spelled anything out in statute for how those other entities use it, should we be?

Rep. Roers Jones: The legislature grants to different entities the right to use quick take. I know that the other entities are not using a process that is as regimented and long as this process. Applying this to the rest of them goes beyond the intent of the changes we made 2 years ago.

Chairman K. Koppelman: Is the process for quick take for political subdivisions and other entities; other than water districts, in the terms of the process they use, is that spelled out somewhere? If it is, would it be in code or administrative rule?

Unintelligible response. 25:00 to 25:16

Chairman K. Koppelman: Recapped the choices for the amendment.

Voice Vote made.

Motion carries.

Rep. Jones: Made a motion to strike section 1 of the amendment.

Rep. Roers Jones: Seconded the motion.

Rep. McWilliams: If we strike all of section 1 then we're not applying the additional process to other political subdivisions?

Chairman K. Koppelman: Correct.

Rep. Rick Becker: I will resist this motion.

Rep. Roers Jones: I think the concern is if we are to go through and create a process legislatively for each one of these other entities, that we ought to do it through a proper bill and a hearing and give each one of those entities the opportunity to have their say.

Rep. Jones: My reason for striking number 1 is because I'm afraid if we move forward with that full thing we'll have so much opposition to fail to pass anything.

Rep. Simons: If we leave this bill the way it is and it fails, I think it will serve as a warning to these people.

Rep. McWilliams: I think we heard from a lot of people that said they wanted to keep quick take. By prescribing a process we're telling them that we heard their complaints. I thought leaving section 1 was a good move on Rep. Jones' part.

Rep Rick Becker: I don't think Rep. Roers Jones' concern applies here; because what was suggested was that when we have a process that these subdivisions and agencies need to follow, they need to have input.

Voice Vote made.

Motion Carried.

Rep. Becker: Made a motion to replace section with the exception of subsection 7 and 8.

Rep. Jones: seconded the motion.

Rep. Jones: I think this is a good process. This will specifically put this together for the water resource boards.

Rep. Jones: continued with his explanation of the amendment.

Rep. Roers Jones: I think we are going about this backwards. Maybe we should turn this into a study; so we can look at all of the different types of quick take processes that are being used. We don't have any documentation or testimony that this process is being abused.

Chairman K. Koppelman: I think you are correct. I don't know the number of times quick take is used. Do you have any sense of that at all?

Rep. Roers Jones: I don't have numbers off the top of my head. It's probably in a single digit fraction.

Rep. Rick Becker: It can't be that horrendously impactful if it's such a tiny amount.

Rep. Bob Paulson: If we put this amendment back on and take out 7 and 8, what is the penalty for an entity that blows this off? Can we urge the court system to give them head of the line privileges in court?

Chairman K. Koppelman: I assume the remedy would be the court system.

Rep. Paur: Even if you adopt this whole thing are they doing to stop using it?

Chairman K. Koppelman: They can't threaten quick take at the outset as a negotiating tool.

Rep. Jones continued with his explanation.

Rep. Roers Jones: The quick take process is a day in court. They have that opportunity now. This process is not set up to be applied to the other types of entities; this process is set up to be applied only to the water resource districts.

Representative Simons: It is a hammer and I have seen this first hand.

Rep. Jones: I don't think the timeline is bad. The Senate side could soften it.

Chairman K. Koppelman: Subsection 4; if we're not deal with the water district, what about the county commission?

Rep. Jones: It is just an extra set of eyes in this process.

Rep. Roers Jones: We are now giving a county commission veto authority over a state agency.

Rep. Jones: It's not veto authority over a state agency; it's veto authority over quick take. If they say it's not eligible for quick take, they can go through the eminent domain process.

Voice Vote made.

Motion Carried.

Rep. Jones continued with the amendment.

Rep. Roers Jones: Made a motion to amend section 2 to change the 10 year period to the next legislative session.

Rep. Satrom: Seconded the motion.

Rep. McWilliams: If it was just a month before the session met, there is no penalty there for not going through the process.

Rep. Roers Jones: If the legislature identifies a problem, they could create a new process but also a penalty period of time.

Rep. McWilliams: It could be amended from 10 years to 2 years.

Rep. Rick Becker: I'm going to resist altogether; it doesn't make sense.

Rep. Jones: I'm going to resist this amendment; because my intention is to have a deterrent from abuse.

Voice Vote made.

Motion Failed.

Rep. McWilliams: Made a motion for a "Do Pass as Amended".

Rep. Magrum: Seconded the motion.

Roll Call Vote: 7 Yeas 7 Nays 0 Absent

Motion Failed.

Rep. Roers Jones: Made a motion to send out the bill without committee recommendation.

Rep. Satrom: Seconded the motion.

Rep. Vetter: I'm going to resist that motion.

Roll Call Vote: 5 Yeas 9 Nays 0 Absent

Motion Failed.

Rep. Vetter: Made a motion in section 2 to change the period to 2 years instead of 10 years.

Rep. Hanson: Seconded the motion.

Voice Vote made.

Motion Carried.

Rep. Jones: Made a motion for section 4 to take the county commissioners out.

Rep. Hanson: Seconded the motion.

Rep. Simons: They were saying this is an issue with the people. These people are feeling threatened by government.

Rep. McWilliams: Isn't it the role of the county commission to stand up and block whatever another agency above them might be doing?

Chairman K. Koppelman: We'd be putting a procedure in law for political subdivisions and others authorized to use eminent domain and quick take in terms of how they would do it.

Rep. McWilliams: If there's a water district that isn't doing very well, does the county commission have any jurisdiction over the water district?

Chairman K. Koppelman: This language is in existence right now for the water districts.

Rep. Jones: This is not going to take it away for the water boards.

Voice Vote made.

Motion Carried.

Rep. Jones: Made a motion under subsection 6 to strike "no longer needs" and insert "does not use".

Rep. Vetter: Seconded the motion.

Voice Vote made.

Motion Carried.

Rep. McWilliams: Made a motion for a "Do Pass as Amended".

Rep. Magrum: Seconded the motion.

Roll Call Vote: 9 Yeas 5 Nays 0 Absent

Motion Carried.

Rep. Jones: Carried the bill.

Chairman K. Koppelman: Closed the discussion.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1184

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-15, and two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the general use of quick take eminent domain; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is created and enacted as follows:

Quick take eminent domain - Use - Restrictions - Penalty.

1. Unless otherwise specified by law, when the state, a department or agency of the state, or a political subdivision seeks to acquire a right of way under section 16 of article I of the Constitution of North Dakota by making an offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county where the right of way is located, the state, department, agency, or political subdivision first shall attempt to purchase the right of way by conducting informal negotiations for not less than sixty days.
2. If informal negotiations fail, the state, department, agency, or political subdivision shall engage in formal negotiations by:
 - a. Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - b. Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - c. Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
3. Any written communication to the landowner must include contact information for responding to the communication and a description of the required negotiation timeline.

4. The state, department, agency, or political subdivision may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the state, department, agency, or political subdivision shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the state, department, agency, or political subdivision there has been no reference or threat of quick take eminent domain during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the state, department, agency, or political subdivision may take immediate possession of the right of way, but not a blanket easement, if the state, department, agency, or political subdivision:
 - a. Files an affidavit by a lawfully authorized representative which states the district has fulfilled the required negotiation steps; and
 - b. Deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
5. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the entity that acquired the land, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
6. If ownership of a right of way has not terminated, ownership of a right of way acquired under this section terminates automatically when the state, department, agency, or political subdivision no longer needs the right of way for the purpose for which the right of way was acquired.
7. If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person for failing to substantially comply with this section, or another section governing the exercise of quick take eminent domain under section 16 of article I of the Constitution of North Dakota, the person may not use quick take eminent domain for any purpose for a period of ten years from the date of the determination or judgment.
8. A person failing to comply substantially with this section, or another section governing the exercise of quick take eminent domain under section 16 of article I of the Constitution of North Dakota, is liable to the owner of the property taken for treble damages incurred by the owner of the property.

SECTION 2. Two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code are created and enacted as follows:

If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person

for failing to substantially comply with this subdivision, the person may not use quick take eminent domain for any purpose for a period of ten years from the date of the determination or judgment.

A person failing to comply substantially with this section is liable to the owner of the property taken for treble damages incurred by the owner of the property."

Renumber accordingly

February 18, 2019

DP 2/18/19
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1184

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-15, and two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the general use of quick take eminent domain; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is created and enacted as follows:

Quick take eminent domain - Use - Restrictions.

1. Unless otherwise specified by law, when the state, a department or agency of the state, or a political subdivision seeks to acquire a right of way under section 16 of article I of the Constitution of North Dakota by making an offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county where the right of way is located, the state, department, agency, or political subdivision first shall attempt to purchase the right of way by conducting informal negotiations for not less than sixty days.
2. If informal negotiations fail, the state, department, agency, or political subdivision shall engage in formal negotiations by:
 - a. Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - b. Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - c. Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
3. Any written communication to the landowner must include contact information for responding to the communication and a description of the required negotiation timeline.

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4. The state, department, agency, or political subdivision may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. The state, department, agency, or political subdivision may take immediate possession of the right of way, but not a blanket easement, if the state, department, agency, or political subdivision:
 - a. Files an affidavit by a lawfully authorized representative which states the district has fulfilled the required negotiation steps; and
 - b. Deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
5. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the entity that acquired the land, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
6. If ownership of a right of way has not terminated, ownership of a right of way acquired under this section terminates automatically when the state, department, agency, or political subdivision does not use the right of way for the purpose for which the right of way was acquired.

SECTION 2. Two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code are created and enacted as follows:

If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person for failing to substantially comply with this subdivision, the person may not use quick take eminent domain for any purpose for a period of two years from the date of the determination or judgment.

A person failing to comply substantially with this section is liable to the owner of the property taken for treble damages incurred by the owner of the property."

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB1184_____**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0553.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Jones Seconded By Rep Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Voice Vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184_____**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Strike Section 1 of 19.0553.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Jones Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Striking section 1 of the amendment.

Motion Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184 _____**

House Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: See Below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Becker Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Made a motion to replace section with the exception of subsection 7 and 8.
Motion Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184 _____**

House Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: See Below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Made a motion to amend section 2 and change the 10 year period to read until the next legislative session.

Motion Failed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		X	Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker		X			
Rep. Terry Jones		X			
Rep. Magrum		X			
Rep. McWilliams		X			
Rep. B. Paulson		X			
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons		X			
Rep. Vetter		X			

Total (Yes) 5 No 9

Absent 0

Floor Assignment _____

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

Motion Failed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184 _____**

House Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: (See Below) _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Vetter _____ Seconded By Rep. Hanson _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
 A motion in section 2 to change the 10 year period to 2 years
 Motion Carried.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1184_____**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: (See Below)

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
 Made a motion for section 4 to take the county commissioners out.
 Motion Carried

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1184 _____**

House Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: See Below

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Jones _____ Seconded By Rep. Vetter _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Buffalo		
Vice Chairman Karls			Representative K. R. Hanson		
Representative Becker					
Representative Terry Jones					
Representative Magrum					
Representative McWilliams					
Representative B. Paulson					
Representative Paur					
Representative Roers Jones					
Representative Satrom					
Representative Simons					
Representative Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
 Made a motion under subsection 6 to strike "no longer needs" and insert "does not use".
 Motion Carried

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1184 _____**

House Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: 19.0553.01003 _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. McWilliams _____ Seconded By Rep. Magrum _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Representative Buffalo		X
Vice Chairman Karls		X	Representative K. R. Hanson		X
Representative Becker	X				
Representative Terry Jones	X				
Representative Magrum	X				
Representative McWilliams	X				
Representative B. Paulson	X				
Representative Paur		X			
Representative Roers Jones		X			
Representative Satrom	X				
Representative Simons	X				
Representative Vetter	X				

Total (Yes) 9 _____ No 5 _____

Absent 0 _____

Floor Assignment Rep. Jones _____

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

Motion Carried

REPORT OF STANDING COMMITTEE

HB 1184: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1184 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-15, and two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the general use of quick take eminent domain; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is created and enacted as follows:

Quick take eminent domain - Use - Restrictions.

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2. If informal negotiations fail, the state, department, agency, or political subdivision shall engage in formal negotiations by:
 - a. Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - b. Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - c. Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
3. Any written communication to the landowner must include contact information for responding to the communication and a description of the required negotiation timeline.
4. The state, department, agency, or political subdivision may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. The state, department, agency, or political subdivision may take immediate possession of the right of way, but not a blanket easement, if the state, department, agency, or political subdivision:

- a. Files an affidavit by a lawfully authorized representative which states the district has fulfilled the required negotiation steps; and
 - b. Deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
5. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the entity that acquired the land, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
 6. If ownership of a right of way has not terminated, ownership of a right of way acquired under this section terminates automatically when the state, department, agency, or political subdivision does not use the right of way for the purpose for which the right of way was acquired.

SECTION 2. Two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code are created and enacted as follows:

If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person for failing to substantially comply with this subdivision, the person may not use quick take eminent domain for any purpose for a period of two years from the date of the determination or judgment.

A person failing to comply substantially with this section is liable to the owner of the property taken for treble damages incurred by the owner of the property."

Renumber accordingly

2019 TESTIMONY

HB 1184

#1
HB 1184
1-22-19
pg 1

Mr Chairman and members of the committee,

My name is Tom Kading for District 45 in Fargo.

Before you is House Bill 1184. This bill removes the authority for governing authorities to use Quick Take to acquire property for government use.

Constitutional Basis

Eminent Domain is the right of government to take property for public use with the payment of just compensation. This right is established by the 5th Amendment in the US Constitution. The 14th Amendment further provides that certain due process safeguards are due in a taking. Such due process includes notice and an opportunity to be heard. Eminent domain is used when the government has decided a certain piece of real estate is needed for public use and negotiation procedures have failed.

Traditional Eminent Domain

Traditional eminent domain is where negotiations have failed, the government files a lawsuit and then must win the lawsuit. The government must show that the property was a necessity; it is going to be used for public use; and the level of just compensation. It is at the outset of the case the government's burden to prove these items. Only if the government can show a prima facie case, does the citizen have the burden of disproving the government's position. If the court makes the judgement that the government has successfully made the case, only then can the government take the property. In this case due process is achieved. The citizen had the opportunity to be heard prior to the government taking the property. In some states, a process for eminent domain has been established to ensure completion in 120 days. A solution to this issue could be to create an expediated court process for property condemnation. Perhaps a tacked on study.

Quick Take Eminent Domain

Quick Take is another form of eminent domain. This type of eminent domain occurs when negotiations have failed and the government merely files a lawsuit. Prior to winning the lawsuit, the government takes the property. Subsequent litigation is used to determine how much will the citizen be compensated. The taking is done, there is no chance for the citizen to rebut the government's position. Quick Take **DOES NOT** allow for a pre-condemnation hearing as required under the 14th Amendment. Quick Take does not allow for a citizen to have their day in court prior to having their property taken.

Quick Take is used by water boards, municipalities, and WAWS. I have noted the types of use in my written testimony.

- Municipalities - 40-22-05 - opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage
- Water boards - 61-16.1-09 - right of way for the laying of any main, pipe, ditch, canal, aqueduct, or flume

#1
HB 1184
1-22-19
pg 2

- WAWS - 61-40-05

As far as my research has shown, this method of taking has never been fully heard by the US Supreme Court so whether it would now hold up to a constitutional challenge given recent case law is questionable.

Conclusion

When we in government take a private individuals property, the utmost sensitivity must be provided to that individual. Taking someone's property is not something we should do easily. Whether it is an easement or any other type of property interest, it is all a taking by the government. It can certainly be argued that not allowing Quick Take will make it harder for government, but that doesn't mean it's a bad decision. What is a wrong decision is not providing for a property owner to receive due process when we in government take their property. At minimum, when we take a property, the individual from whom we are taking the property should receive a pre-taking hearing. Everyone should get their day in court.

Thank you

Seth A. Thompson

sathompson@vogellaw.com

#2
HB 1184
1-22-19
pg 1

January 18, 2019

VIA EMAIL ONLY

Dustin Gawrylow
North Dakota Watchdog Network
dgawrylow@watchingnd.com

Re: January 15, 2019 Open Records Request

Dear Mr. Gawrylow:

Thank you for the open records request you sent to Kim Schilke on January 15, 2019. Vogel Law Firm represents the Western Area Water Supply Authority ("WAWSA"), and I write in response to your request that seeks:

documentation for ALL usage of Eminent Domain and/or Quick Take since chartering by the state; when it has been executed and used, as well as when it has been threatened to be used (i.e., legal notice sent to land owners (i.e. legal notice sent to land owners)).

Your request is vague as to what is being sought; thus, I write for clarity. Your request asks for documentation for all usage of eminent domain and/or quick take since WAWSA's creation. It is unclear what documents your request seeks. Does your request seek all documents related the use of eminent domain and/or quick take since WAWSA creation? If so, please note such a request seeks thousands of documents and will require many hours of work to fulfill the request. By law, WAWSA is entitled to charge a reasonable cost for a public records request at .25 cents per page and \$25 per hour after the first hour. N.D.C.C. § 44-04-18(2).

Note that instances in which WAWSA has used eminent domain are in the public domain because eminent domain actions are litigated in the courts of North Dakota. Thus if you are seeking the instances in which eminent domain has been used, a list of district court case docket numbers in which WAWSA has used eminent domain can be provided. Please let me know if this will satisfy your request.

Your request also asks for documentation as to when eminent domain has been "threatened." Please clarify this request. For clarity, I do not understand your request to seek documentation in which WAWSA has merely explained the eminent domain process to a land owner, but seek your clarification.

VOGEL
Law Firm

US Bank Building | 200 North 3rd Street, Suite 201 | PO Box 2097 | Bismarck, ND 58502-2097
Phone: 701.258.7899 | Fax: 701.258.9705 | Toll Free: 877.629.0705

Fargo • Bismarck • Moorhead • Minneapolis • Grand Forks

www.vogellaw.com

January 18, 2019
Page 2

I look forward to clarification of your open records request.

Sincerely,

Seth Thompson

Seth A. Thompson

SAT:jjc

TESTIMONY IN FAVOR OF HB 1184

#3
HB 1184
1-22-19
Page 1

Good Morning Mr. Chairman and Committee. My name is Paul Henderson and I farm in Cavalier County in the northeast part of the state. I am here today to argue for the passage of HB 1184.

What this bill does is restore due process for the landowner.

At it's core, the State should do nothing to make it easy for the process of forcibly taking private property.

So why am I here? I have been a member and a director for Land Owners Association of North Dakota for more than 15 years. In 2005, Land Owners Association of North Dakota decided to write and gather signatures for an initiated measure dealing with eminent domain that established the definition of a common carrier and what could be and what not could be used to employ the eminent domain process. And some of this wording is still in this statute. For instance-- on page 2, line 15-17 -- It reads:

“Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.”

This was put into statute to protect private property. This was all added in response of the “Kelo vs city of New London”-- a case in New Hampshire where a private contractor used eminent domain to condemn and take a woman's house using the “common good” argument claiming that “common good” in this case was increased tax revenue for the subdivision which would trigger eminent domain.

So, I was involved in putting the current language, that I just read, into statute.

Last summer I got a call from a good friend that had gone thru the current process of having a power company eminent domain his property using the Quick Claim method that this bill proposes to change. I called the Public Service Commission and asked them what the procedure was and if they

could help this landowner and they said they couldn't help because the current process had been followed and it would take a legislative remedy to change it.

At the end of the day, this landowner was not happy with his outcome or the process. This is the current process-- on page 3- line 12-- "However, upon due proof of the service of said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the court may without further notice make and enter an order determining the municipality to be entitled to take immediate possession of the right of way."

This is the process my friend ended up with. He didn't agree to the taking, and he did not agree to the sum of the taking. In his case the escrow amount that the judge ordered in the proceeding is still sitting at the county courthouse.

But this isn't about my friend specifically, I'm just giving you some background as to why I'm here. So – 5 years ago, on my own farm, I had a request for an easement by a common carrier. I was not satisfied that the infrastructure would be properly disposed of in the case of the common carrier's bankruptcy or disappearance. So I refused and the common carrier was able to go across the road and my neighbor signed off on the easement. But if I would have went thru the eminent domain process, I would have run into the same process that my friend went thru last summer which is the quick deed take process that we currently have in statute.

So what this bill asks is to restore due process to the property holder making this a proper process instead of a lop sided event.

Eminent domain is a special process. It's the only time the State literally allows a common carrier to take a private property. Right now it is rare for a jury to hear an individual case and the quick claim is used almost exclusively. Right now there is not a fair process for this procedure. 1. The landowner, even if he has special circumstances, is still going to get lumped into this quick claim and money in escrow problem we are in right now. And 2. He doesn't have a fair and equitable way to argue for just compensation for the taking of property from him and his heirs.

I ask for a Do Pass on this bill to restore due process to the property rights

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holder.

Statute already codifies eminent domain. We're not arguing the fact that it is sometimes needed. This bill restores the property owner's right to negotiate in these two very important areas- price and any extenuating circumstances.

Thank you for hearing my testimony today and I would welcome any questions.

Paul Henderson
Calvin, ND

#4
HB1184
1-22-19
Jg

pm Tuesday, November 20, 2018

Lincoln Land Development, LLP, Plaintiff and Appellee

20180117^{v.}
City of Lincoln, Defendant and Appellant

Appeal from: South Central Judicial District, Burleigh County, Judge James S. Hill,
08-2015-CV-00348

Nature of

Action: Real Property

Counsel: Appellant: Randall Joseph Bakke
Appellant: Bradley Neuman Wiederholt
Appellee: Paul Reginald Sanderson
Appellee: William Jules Behrmann

Issues: Appellant's Statement of the Issues:

- City of Lincoln provides the following issues presented for review:
- A. The Court erred in concluding and instructing the jury that City's public easement established through prescriptive use is a taking of Plaintiff's property without just compensation. *Mckenzie Cty. v. Reichman*, 2012 ND 20 at ¶ 11, 812 N.W.2d 332.
 - B. The Court erred in requiring a permanent roadway easement despite City's public easement established through prescriptive use. *Keidel v. Rask*, 290 N.W.2d 255, 257 (N.D.1980).
 - C. The Court erred in refusing to consider direct documentary evidence of City's easement in Lagoon Road.
 - D. The Court erred in determining Plaintiff was the sole prevailing party where Defendant prevailed in the defense of all but a single lawsuit claim. *WFND, LLC v. Fargo Marc, LLC*, 2007 ND 67, ¶ 49, 730 N.W.2d 841, 858.

Appellee's Statement of the Issues:

- I. Whether the district court properly concluded the City's construction of Lagoon Road in 2011 constituted a taking without just compensation.
- II. Whether the district court properly concluded LLD's inverse condemnation claim was not barred by the City's prescriptive easement.
- III. Whether the district court properly concluded the City did not have an express easement, an implied easement, and/or an easement by estoppel.
- IV. Whether the district court properly awarded costs and attorney's fees to Plaintiff as the prevailing party in an inverse condemnation proceeding in accordance with N.D.C.C. ¶ 32-15-32.

Briefs: [Case Summary](#)
[Appellant Brief 1](#)
[Appellee Brief 1](#)
[Listen to recording of oral argument in MP3 format](#)

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HOUSE JUDICIARY COMMITTEE
Date: January 22, 2019 at 8:30 a.m.

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pg 1

North Dakota Department of Transportation
Mark Gaydos, Environmental and Transportation Services Director

House Bill 1184

Good morning, Mr. Chairman and members of the committee. I'm Mark Gaydos, Environmental and Transportation Services Director at the North Dakota Department of Transportation. I am here to oppose House Bill 1184. Thank you for giving me the opportunity to discuss this proposed bill and answer any questions.

House Bill 1184 proposes to eliminate the ability of state and local government authorities from using quick take eminent domain. The legislature previously granted the North Dakota Department of Transportation (Department) authority to use quick take eminent domain in 1957. As you may recall this was the start of the Interstate construction program. The quick take provision allows the Department to take possession of property upon making an offer to purchase, and then depositing the amount of offer with the clerk of district court.

Losing the authority to use quick take would impact the timing and resources necessary to deliver highway improvement construction projects that require right of way through eminent domain. First, possession of needed right of way would not occur until after the court award and judgement. This would delay the bid and award of a construction project an estimated twenty-four to thirty-six months from the start of the eminent domain action. Additionally, it would require additional Department and court resources to process eminent domain actions. Presently, the Department is able negotiate an agreement and process an eminent domain in order to resolve title issues, such as probates or liens. This mutually benefits both parties and are not appealed.

Some of the current safeguards in place to protect the landowner's interest in quick take eminent domain procedures are as follows:

- Fair market value is established by an appraisal meeting state and federal requirements, such as, the Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

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- The appraisal is reviewed to ensure compliance with the Uniform Act and to determine just compensation or amount of offer.
- The offer is made to the landowner and negotiations ensue for a reasonable time period – typically, a minimum of thirty days. During this time the landowner may ask questions and offer other evidence for consideration.
- If negotiations fail, the Department sends a pre-condemnation notice to the landowner, followed by a final offer to purchase. Finally, if an agreement cannot be reached, a deposit is made with the county clerk of court in which the property is located.

It is important to note, not all quick take eminent domain actions go to trial, many are either not appealed or are resolved by legal settlement after further negotiations. In all actuality, very few quick take eminent domain cases actually go to trial. This proposed change could delay the delivery of projects because an eminent domain action may delay the construction of a whole project until a trial is concluded. Therefore, the Department is opposed to this change.

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

NORTH DAKOTA

Water Users
Association

AL
HB 1184
1-22-19
PZ

701-223-4615
701-223-4645 (Fax)

PO Box 2254 • Bismarck, ND 58502-2254

Testimony, HB 1184

8:30 AM, January 22, 2019

Prairie Room, State Capitol, Bismarck, ND

Jack Dwyer, North Dakota Water Users Association, North Dakota Water Resource Districts

Chairman Koppleman and members of the House Judiciary Committee:

My name is Jack Dwyer and I represent the North Dakota Water Users Association and the North Dakota Water Resource Districts Association. I am here to testify on behalf of those groups in opposition to House Bill 1184.

Water projects, whether those projects are water supply projects, major flood control, rural flood control, or retention projects, are typically started at a local level based on need. Because these projects often span across a number of different properties, and are used to benefit the public, and because the return on investment of these projects is low, these projects are often run by a local governmental entity or political subdivision.

In North Dakota, for example, rural water supply is often constructed by a water district formed under N.D.C.C. § 61-35, assessment drains and local flood control projects are often constructed by a water resource district formed under N.D.C.C. § 61-16.1, and regional irrigation is constructed by irrigation districts under N.D.C.C. § 61-05. Of course, some of the large regional projects are run by governmental entities you know by name: Western Area Water Supply Authority, Garrison Diversion Conservancy District, and Souris River Joint Board.

While water projects are done for the benefit of the public, they inevitably encroach upon the property rights of members of the public. According to North Dakota Century Code, if the water project sponsor seeks to utilize private property in a way that will leave some utility to the private citizen, the water project sponsor can typically seek an easement interest (i.e. buried water lines or open ditch). However, if the use/encroachment on private property is more permanent in nature, like an earthen dike or concrete outfall structure, the local governmental entity may need to acquire a fee simple interest in the property.

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Eminent domain is generally a last resort to a negotiated purchase attempt by the project sponsor. In any eminent domain case, there are two main issues: 1) is the property necessary for public use, and 2) what does the project sponsor owe for just compensation.

Certain water sponsors have the statutory authority to utilize "quick take," which on a basic level allows the project sponsor to take possession of property before a trial can be held. However, this right to take possession of property that is necessary for a public water project is subject to important protections for landowners. Let me explain.

I'll talk specifically about North Dakota water resource districts, since there may be others in the room that will talk about specific projects or water districts. North Dakota water resource districts have a wide range of responsibilities or projects, depending on the water resource district, including construction or coordination of dams, flood control projects, water conservation projects, and distribution or supply projects. Water resource districts can form joint water resource boards with neighboring water resource districts, to promote water projects that exceed the political boundaries of a water resource district.

Water resource districts have statutory authority to utilize quick take eminent domain, but only when 1) the interest sought is an easement interest, and 2) federal or state funding has been made available to the project for which the property is needed. These conditions ensure that a project sponsor only takes possession of private property when it is certain the property is necessary for public use.

Landowner protections exist in the quick take process as well. If quick take is authorized, a water resource district must 1) conduct informal negotiations for 60 days; 2) obtain an appraisal and conduct formal negotiations for 30 days; and 3) refer the matter to the county commission, who will give the landowner a 30 day notice of a hearing of the county commission. The county commission must then verify that the water resource district has followed the process (and has not made any reference to quick take) before voting on whether to approve the use of quick take for obtaining the easement in question. The water resource district must then deposit the amount of the written offer with the clerk of district court, and file an affidavit before taking possession of the property. This determination of the county commission is subject to appeal to the district court.

Again, quick take is only utilized when the sponsoring entity has exhausted negotiations, and when the question of public use is next to certain. Given the delay in construction that could occur waiting for trial, quick take is an important tool in the tool chest for water projects.

Please give HB 1184 a DO NOT PASS recommendation. Thank you for allowing me to speak with you this morning.

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RJA

Testimony to House Judiciary Committee

Re: House Bill 1184
Date: Tuesday, January 22, 2019
By: Ryan Ackerman, PE
Administrator, Souris River Joint Water Resource Board

The Souris River Joint Board is a multi-jurisdictional entity that has representation from each of the four counties along the Mouse River in North Dakota along with a fifth representative from the City of Minot. The Souris River Joint Board is the local sponsor of the Mouse River Enhanced Flood Protection Project, which is a \$1 billion initiative to reduce flood risk throughout the basin, including the communities of Minot, Burlington, Sawyer, and Velva, and rural developments, farms and ranches.

We are opposed to House Bill 1184, which would strip an important and necessary tool from water resource districts that are trying to advance critical water projects across the State. Recent reforms to the use of quick-take eminent domain were made by the Legislature which amended the statute to increase periods for required negotiation and noticing prior to the taking. While these reforms extend the timeframe and delay projects, we understand the rationale and have adapted the approach to acquiring the necessary land rights to implement the Mouse River Enhanced Flood Protection Project.

However, eliminating quick-take entirely will have devastating consequences on the fate of water projects. This tool is used as a last resort after all reasonable negotiation efforts have stalled. In particular, we are very concerned that the elimination of this tool will place the project at a serious disadvantage when negotiating terms with two Class 1 railroads, who have billions of dollars in resources and full legal teams who could draw out a traditional eminent domain proceeding for several years or even decades.

We urge a Do Not Pass recommendation from this committee.

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Testimony Presented on HB 1184 to the

House Judiciary Committee
Representative Kim Koppelman, Chairman

Brenda Derrig, City Engineer for City of Fargo

January 21, 2019

Mr. Chairman and Members of the Committee,

The City of Fargo wants to continue to provide our citizens reliable and affordable infrastructure—roads, sewer, water, et cetera. To achieve this, we have our Capital Improvement Plan, which includes our programmed Federally Funded projects. HB 1184 threatens that very concept. On behalf of the Fargo City Commission, I seek your support of cities’ ability to provide reliable and affordable infrastructure and I seek your opposition to HB 1184.

Cities such as Fargo work diligently with impacted property owners to acquire the necessary easements and/or right-of-way for adjacent projects on both federally and locally-funded projects. Sometimes, despite the best efforts of design engineers, the need for additional property rights are not known until further into the project design. Once the need for acquisition of an easement or right of way is established, the affected property is appraised by a qualified independent real estate appraiser, whose appraised value is used by the City to start good faith negotiations with a fair offer. Most of the time, the City and property owner agree upon a price after some negotiations.

In the rare occurrence when negotiations are not successful, then the City may unfortunately have to make a decision to proceed with a jury trial to determine the property value. This is a decision the City does not take lightly but at times does have to make and when it does, it is usually time sensitive due to a pending project, which is why at time the use of “Quick Take” with eminent domain is critical.

The City only uses “Quick Take” when a project timeline does not allow for normal eminent domain procedure to be used. It is important to note that the use of “Quick Take” does not replace eminent domain but instead allows for a project to commence on the timeline needed so it can move forward without unnecessary expense and delay. Once the City decides to move forward to take the property, we must deposit the appraised value of the easement or right-of-way in court. At this time, the property owner can immediately challenge the public need of the taking in court. Only when a judge confirms the necessity of the taking for the project can the City take immediate possession of the easement or right-of-way. From this point forward, the typical eminent domain procedures are followed to determine the appropriate property value. During this time, the City also continues to negotiate with the property owner with the goal of avoiding a jury trial. .

Without the use of “Quick Take”, the project may not be able to move forward on the timeline required, which could jeopardize the availability of funding sources being used on the project.

An example of this is recent construction on 32nd Avenue South within the city in Fargo. In 2017, the City and the NDDOT reconstructed 32nd Avenue South along with improvements to its interchange with Interstate 29. All-in, with federal, state and local funds, this was a \$20 million project. The timeline for the project was as follows:

- In 2013 the City of Fargo applied for federal aid for the project and NDDOT “programs” the project by including it in the 2014 – 2018 Statewide Transportation Improvement Program, setting aside federal highway transportation funds towards the project. The environmental study and design historically start two years prior to the project so in 2015 the City of Fargo solicited local engineering firms for Engineering Services and Environmental Clearance Documents for preliminary and final Design and selected a qualified engineering firm.
- In May 2016 the design of the project proceeded far enough so that the first public meeting with affected property owners was held.

- From June to December 2016 appraisals were completed and property owner meetings were held to further discuss the project and to acquire the necessary easements.

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Sixteen properties were directly impacted by the widening/reconfiguring for the 32nd Avenue South construction project. The City was able to acquire all but one of the sixteen needed temporary and/or permanent easements. The City met with the remaining property owner an additional four times to discuss options for refining the parking lot reconfigurations and achieve a design that would not lose any parking stalls. After a number of iterations, the City was able to accomplish this goal while maintaining nationally accepted parking lot design dimensions. In addition to the in person meetings, there were also numerous e-mails and telephone conversations working through the details of these parking lot configurations. Despite these efforts, the City was not able to come to an agreement on the purchase price with the property owner prior to the Federal Highway Administration requirement of Right-of-Way Certification prior to bid award. Therefore, at this time the City decided to move forward with exercising "Quick Take" in order to be able to move forward with the construction of the project. Without exercising this option, the City would have been at risk of losing federal and state money if it had to follow typical eminent domain timelines. With the "Quick Take" provisions of allowing placement of the appraised value of the easement in court and obtaining the court's authorization to take immediate possession of the easement area, the construction contract was able to be awarded and construction started while the City and property owner continued to negotiate.

Fortunately, the City and property owner were able to settle the dispute by agreement prior to construction in this segment of the project; however, even had no agreement been reached, the property owner would have been able to have a jury trial to establish the appropriate compensation to be paid for the property obtained. The monetary settlement for this property owner was approximately \$25,000. Were it not for the quick-take procedure, a \$20,000,000 project would be blocked by a single property owner with a \$25,000 interest and delays would have caused untold losses—millions of dollars in federal funds alone.

If House Bill 1184 were enacted, a single land owner could block a much-needed construction project—a road, a sewer or water line, or lift station installation—from moving forward, causing unwarranted delay, inconvenience and public expense. HB 1184 tips the scale too far. Please join us in opposing House Bill 1184.

Sixty-sixth Legislature



Airport Association of North Dakota

#9
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PJ

Matthew Remyse - President Kelly Braun - Vice President

Jordan Dahl - Sec. / Treasurer

P.O. Box 991 Bismarck, North Dakota 58502-0991

(701) 355-1808

January 22, 2019

RE: Testimony to House Judiciary Committee – HB 1184

Chairman Koppelman and members of the committee,

I am Matthew Remyse, the President of the Airport Association of North Dakota (AAND). I want to thank you for the opportunity to testify here today. AAND is the professional organization for North Dakota Airports and it serves to promote airports, aviation, and safety across the state. Among its members are all eight commercial service airports, 70 of 81 general aviation airports and aviation engineering and planning firms. I'm here today on behalf of the association to express our concerns with HB 1184.

Airports are a valuable asset for North Dakota's economy and touch all major industries, including agriculture, manufacturing, healthcare, tourism, energy and technology. According to the 2015 Statewide Economic Impact of Aviation study, North Dakota's 89 airports generate an economic impact of \$1.5 billion annually and employ 4,439 individuals. Our airports are growing, in 2018 passenger numbers at our commercial service airports increased, the number of registered aircraft in the state have increased, and we are seeing new activities on our airfields.

With this growth, comes the continued need to develop and maintain our state's airports. A key component to development at our airports is land, in most cases our airports have the land that is needed for expanded development, but occasionally there is the need for an airport to expand beyond its boundaries. In these cases, airport leaders are making the extremely difficult decision of using eminent domain to expand the airport's property. This is a decision that is not

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taken lightly by airport leaders across the state as they would prefer to negotiate with a willing seller than use eminent domain. But when they do decide to initiate eminent domain proceedings, they need to have the ability to use the quick take method. Eminent domain proceedings without the quick take method may take several months or even years to complete and this can delay projects and jeopardize federal funding.

Another key piece in developing our airports, is federal funding through the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). Federal grants received through the AIP are used to fund eligible capital improvement projects. Our airports compete on a national level for federal AIP funding. Competing for these federal funds is challenging, a project must have a high priority, a strong justification, a solid financial plan and be shovel ready. Compounding this competition, is the fact that the amount of federal funding available through the AIP has remained flat since 2001, while the cost of developing and constructing airport projects throughout the country has continued to increase due to rising passenger levels, rising construction costs, and inflation. Our airport leaders work closely with state and FAA officials, to assure projects are ready so they can accept federal AIP funding when it becomes available to them. Because often, federal funding only becomes available for a short time on short notice and may not become available for another year or two afterwards, if not accepted. That is how competitive federal funding for our airports has become. One of the requirements necessary to receive federal AIP funding, is that the airport have control of the land that is going to be developed. That is why the quick take method is so important to airports. If an airport cannot show control of the land they cannot accept federal funds and their project becomes delayed.

In conclusion, I ask that you please allow airports to keep the ability to use the quick take method in eminent domain proceedings. This will allow airports in eminent domain proceedings the ability to capture federal AIP funding when it becomes available. Additionally, it will allow airport development to continue without delay. Federal AIP funding is challenging enough for

our airports, please don't add additional constraints. I thank you for the opportunity to provide testimony today and I will take any questions the committee may have for me.

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Respectfully,



Matthew Remynse
President, AAND

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Testimony in Opposition to House Bill 1184
January 22, 2019
House Judiciary Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Judiciary Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to Hose Bill 1184.

Though lengthy, the bill's purpose is clear. It seeks to eliminate all references in the North Dakota Century Code to use of the quick take procedure to exercise eminent domain powers. Quick take powers are conveyed by Article 1, Section 16 of the state Constitution. A copy is attached to my testimony for your ease of reference.

The quick take instrument allows a government entity to make a finding that a parcel of land is needed for an eligible public project, assess the value of the parcel using an appraisal, deposit the full amount of the appraisal with the county clerk of court and take possession of the property. The property owner may accept the deposited amount or they may ask the court to determine the value of the property.

Although most governmental agencies try to avoid acquisition of private lands for public projects, at times such an acquisition cannot be avoided. This is particularly true in the case of roadway, airport and utility projects where there is no practical way to avoid a particular parcel of ground. Failure to acquire land for this project would mean that the road, airport runway or utility lines with linear alignments could not be completed.

The speed of the acquisition is necessary to ensure the project can be constructed in a timely manner for the benefit of the public as a whole. Often, when federal funds are being used on the project, the land must be made available and under control of the government before grant funds are committed to the project. This is particularly true of airport and highway projects that involve competitive grant applications.

For these reasons, Mr. Chairman and committee members, the North Dakota League of Cities opposes House Bill 1184 and we ask for a Do Not Pass recommendation from your committee.

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forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

Section 11. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

Section 12. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Section 13. The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

Section 14. The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

Section 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

Section 16. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

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House of Representatives Judiciary Committee

Representative Kim Koppelman, Chair

Representative Karen Karls, Vice-Chair

January 22, 2019

Chairman Koppelman, Members of the House Judiciary Committee:

My name is Lance Meyer, and I am the City Engineer for the City of Minot.

I am providing written testimony in opposition to House Bill 1184.

Cities such as Minot are allowed to use quick take eminent domain to acquire land required to construct projects such as roads, utilities, airports, and other critical infrastructure projects. This process can be invaluable when needed.

In Minot, the most significant funding source for major arterial road projects is federal funding. In order to secure federal funding before bidding a project, we must certify to the federal government that all the easements and right of way necessary to construct the project have been acquired.

The land acquisition process is governed in federal law and ties back to the US Constitution to ensure the government does not take possession of land without fair compensation. Unfortunately, some citizens are unwilling to accept a fair appraisal and offer for the needed right of way.

In these instances, using quick take eminent domain, allows cities to take possession of the land after depositing the fair price for the land with the court. The right of way for the project can be certified and the project can proceed.

If HB 1184 passes, this will most certainly delay critical infrastructure projects or cancel them entirely as the federal funding will be sent back to the federal government to be used by another State. All a citizen would have to do to stop a project is delay the process long enough in court to have the funding cancelled. Because federal funding plays a critical role in advancing large infrastructure projects, the funding would have to be sought somewhere else, or the project cancelled entirely.

I urge you to give HB 1184 a DO NOT PASS recommendation.

Thank you for the opportunity to provide testimony in opposition to House Bill 1184.

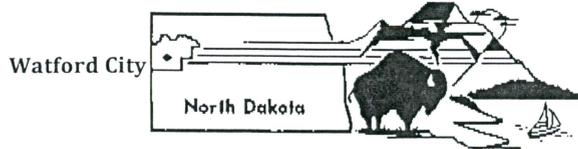
Lance Meyer, P.E., City Engineer

City of Minot

701-857-4100

Lance.meyer@minotnd.org

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City of Watford City

213 2nd St. NE | P.O. Box 494
Watford City, ND 58854
Ph. 701-444-2533
Fax 701-444-3004
www.cityofwatfordcity.com

1/22/2019

8:30 AM – Prairie Room

Urge a DO NOT Pass recommendation on HB 1184

Chairman Koppelman and committee members of House Judiciary,

The City of Watford City opposes the proposed amendments to NDCC 2-06-08, 32-15-01, 40-22-05, 61-16.1-09, 61-24.8-06, 61-40-05 and the repeal of sections of NDCC 11-10-26 and 24-01-22.1.

It is critical that public entities have the tool of 'quick take' in their toolbox. Although seldom used, without it, property owners (frequently out of state or otherwise not local) who do not have an interest in projects that serve the public simply will not come to the negotiation table.

In a rapid growth area such as Watford City and McKenzie County, not having this tool in the past decade would have ground public infrastructure build out and safety and services improvements to a halt. As an example, on some of the 'quick take' civil cases relating to the HWY 85 / HWY 23 by pass around Watford City, cases were working their way through the judicial system one and two years after the by-pass was completed.

In addition to creating time constraints on critically needed projects, the loss of this tool would also push the cost of projects up substantially and create inefficiencies. Speaking for local projects, the boards making these decisions on when to use eminent domain are either elected themselves or appointed by elected boards. These people are typically friends and neighbors of the folks absorbing the impacts of these projects that benefit the public. Therefore, they weigh heavily when to consider using this tool.

For these reasons the **City of Watford City recommends a DO NOT Pass on HB 1184.**

Thanks you for your time and consideration of our concerns.

Mayor Phil Riely, Watford City
(701) 570-4338
phil_riely@yahoo.com

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House of Representatives Judiciary Committee

Representative Kim Koppelman, Chair

Representative Karen Karls, Vice-Chair

January 22, 2019

Chairman Koppelman, Members of the House Judiciary Committee:

My name is Keith Hunke and I am the City Administrator for the City of Bismarck.

I am providing written testimony in opposition to House Bill 1184.

Currently, the City of Bismarck is allowed to use the eminent domain quick take process. This can be an extremely important option when constructing federally funded projects such as major arterial roadway and airport expansion projects that have limited timelines for project right of way acquisition, design, bidding, construction, and expending of federal funding. The FAA and FHWA require the city to have control of the project area land before federal grants are issued.

HB 1184 removes a political subdivisions ability to take property through the eminent domain quick take process. Meaning, a political subdivision like the City of Bismarck cannot take control of land until the court's decision is final. As you aware, eminent domain proceeding can take months even years and losing the ability to take the land right away, through the quick take method, could delay projects and even cause them to be cancelled.

HB 1184 will eliminate our authority, opportunity and responsibility to effectively manage the construction of federally funded projects when the use of the eminent domain quick take process is required.

I urge you to give HB 1184 a DO NOT PASS recommendation.

Thank you for the opportunity to provide testimony in opposition to House Bill 1184.

Keith J. Hunke, City Administrator
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Testimony
House Bill 1184 – State Water Commission
House Judiciary Committee
January 22, 2019

Good morning Chairman Koppelman and members of the House Judiciary Committee. I am Tim Freije, Northwest Area Water Supply (NAWS)/Southwest Pipeline Project (SWPP) Section Head for the State Water Commission. I am appearing before you today regarding House Bill 1184 relating to eliminating the ability of state and local government authorities from using quick take eminent domain.

The North Dakota State Water Commission (NDSWC) owns the NAWS, SWPP, and Devils Lake outlets. NDSWC currently has quick take authority specifically and only for the construction of NAWS, SWPP, and Devils Lake outlets. NAWS and SWPP are large regional water systems providing quality water to the citizens of North Dakota and are specifically authorized in legislation. The NDSWC administers the construction contracts for both projects. NAWS and SWPP comprise over 5,500 miles of pipelines and are currently serving roughly 90,000 citizens. There were roughly 11,000 easements acquired for the two projects, only 42 of which required the use of quick take eminent domain. The Devils Lake outlets have pumped 1.16 million acre-feet of water out of the lake, which equals to approximately 6.5 feet at current lake levels, and about 65,000 fewer acres of land are now inundated by the lake. Eight of the twenty easements acquired for the outlets required the use of quick take eminent domain. Based on these numbers, it is clear that we have used this authority sparingly. Extensive negotiations are completed before this authority is exercised.

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On pipeline contracts, the pipeline alignment is not finalized until the design is between 60-90 percent complete. Easement acquisition cannot begin until this time which is usually within a few months of a project being bid. This leaves a fairly narrow window to obtain the necessary easements and work often begins prior to all easements being acquired. Without quick take, projects probably wouldn't be able to be bid until all easements are in place which would most likely push most projects back at least one construction season and add significant legal as well as escalating construction costs. In our experience, the two most common reasons why landowners refuse to sign an easement are the compensation amount and family or personal feuds. Quick take authority helps us deal with both situations efficiently.

Any project can obtain an easement or real property through eminent domain if it can exhibit a lawful use, necessity, and public benefit. In a quick take scenario, the need, necessity, and public benefit are established by code and all that can be contested is the compensation. A project going to court to repeatedly prove the need and benefit would needlessly add time and cost to our efforts to serve our citizens.

Budgets for water development projects are based off of appropriations provided by the legislature and are not ambulatory, therefore, when costs increase, either fewer citizens are served or serving them takes more time resulting in subsequently greater expense.

There are many occasions when the originally designed route changes. Some of the reasons for changing the route include actual field conditions, field conflicts, and the addition of users. Changes in routes happen during construction, and the easement is needed for construction

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quickly. NDSWC's staff makes every effort to get the easement without the use of condemnation. Only when there are no other options available, NDSWC resorts to condemnation. Quick take is essential for pipeline projects, as the typical eminent domain process is lengthy, and an easement cannot be attained in a timely manner. If quick take authority were taken away from the NDSWC, additional costs would also be incurred to compensate the contractors for remobilizing to the construction site. The current century code allows NDSWC to take possession of the right-of-way after making a written offer to purchase and after depositing the amount with the clerk of the District court in the county where the property is located. This process can be completed within weeks while with typical contested eminent domain cases, the property may not ultimately vest in the condemning authority for a year or more if the matter is contested in court. That will be detrimental to the completion of the construction contracts and will result in additive cost to state taxpayers.

The NDSWC uses our quick take authority very responsibly as evidenced in the minimal number of occasions when it has been used, and negotiated settlement is always preferred. We request that the quick take authority remain unchanged.

Mr. Chairman, this concludes my testimony on House Bill 1184. If you have any questions, I will do my best to address them.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1184

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 32-15, and two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the general use of quick take eminent domain; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-15 of the North Dakota Century Code is created and enacted as follows:

Quick take eminent domain - Use - Restrictions - Penalty.

1. Unless otherwise specified by law, when the state, a department or agency of the state, or a political subdivision seeks to acquire a right of way under section 16 of article I of the Constitution of North Dakota by making an offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county where the right of way is located, the state, department, agency, or political subdivision first shall attempt to purchase the right of way by conducting informal negotiations for not less than sixty days.
2. If informal negotiations fail, the state, department, agency, or political subdivision shall engage in formal negotiations by:
 - a. Sending the landowner an appraisal and written offer for just compensation, which includes a specific description of the exact location of the right of way, by certified mail or commercial delivery requiring a signed receipt, and receiving the signed receipt or documentation of constructive notice.
 - b. Sending the landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt if there is no agreement regarding compensation or no response to the written offer within fifteen days of receipt, and receiving the signed receipt or documentation of constructive notice.
 - c. Sending the landowner a written notice, by certified mail or commercial delivery requiring a signed receipt, of intent to take possession of the right of way if there is no agreement regarding compensation or no response to the written request for a meeting within thirty days of receipt, and receiving the signed receipt or documentation of constructive notice.
3. Any written communication to the landowner must include contact information for responding to the communication and a description of the required negotiation timeline.

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4. The state, department, agency, or political subdivision may not include or utilize any reference to quick take eminent domain during negotiations to acquire the necessary easement for a right of way. If formal negotiation efforts fail, the state, department, agency, or political subdivision shall request approval from the board of county commissioners of the county in which the right of way is located to take possession of the right of way by quick take eminent domain. After receiving the request, the county commissioners shall hold a public meeting and give the landowner thirty days' notice of the meeting to allow the landowner to attend. After receiving verification from the state, department, agency, or political subdivision there has been no reference or threat of quick take eminent domain during negotiations, the commissioners shall vote on whether to approve the taking of the easement for a right of way using quick take eminent domain. If the county commissioners approve the use of quick take eminent domain by a majority vote, the state, department, agency, or political subdivision may take immediate possession of the right of way, but not a blanket easement, if the state, department, agency, or political subdivision:
 - a. Files an affidavit by a lawfully authorized representative which states the district has fulfilled the required negotiation steps; and
 - b. Deposits the amount of the written offer with the clerk of the district court of the county in which the right of way is located.
5. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the entity that acquired the land, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
6. If ownership of a right of way has not terminated, ownership of a right of way acquired under this section terminates automatically when the state, department, agency, or political subdivision no longer needs the right of way for the purpose for which the right of way was acquired.
7. If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person for failing to substantially comply with this section, or another section governing the exercise of quick take eminent domain under section 16 of article I of the Constitution of North Dakota, the person may not use quick take eminent domain for any purpose for a period of ten years from the date of the determination or judgment.
8. A person failing to comply substantially with this section, or another section governing the exercise of quick take eminent domain under section 16 of article I of the Constitution of North Dakota, is liable to the owner of the property taken for treble damages incurred by the owner of the property.

SECTION 2. Two new paragraphs to subdivision b of subsection 2 of section 61-16.1-09 of the North Dakota Century Code are created and enacted as follows:

If a court of competent jurisdiction, agency, or commission makes a determination or enters a judgment against a person

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for failing to substantially comply with this subdivision, the person may not use quick take eminent domain for any purpose for a period of ten years from the date of the determination or judgment.

until the legislative session next month

A person failing to comply substantially with this section is liable to the owner of the property taken for treble damages incurred by the owner of the property."

Renumber accordingly