

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1324

Introduced by

Representatives Kading, Schmidt

Senator Sorvaag

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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