

Fifty-ninth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1472

Introduced by

Representatives S. Kelsh, Nottestad, Zaiser

Senators Mathern, Wardner

1 A BILL for an Act to adopt the Uniform Conservation Easements Act relating to conservation  
2 easements; and to amend and reenact subsection 2 of section 47-05-02.1 of the North Dakota  
3 Century Code, relating to duration of conservation easements.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 47-05-02.1 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 2. The duration of the easement, servitude, or nonappurtenant restriction on the use  
8 of real property must be specifically set out, and except for a conservation  
9 easement created under sections 2 through 6 of this Act in a county contiguous to  
10 the Red River, Missouri River, Lake Sakakawea, or Lake Oahe in no case may the  
11 duration of any interest in real property regulated by this section exceed  
12 ninety-nine years. The duration of an easement for a waterfowl production area  
13 acquired by the federal government, and consented to by the governor or the  
14 appropriate state agency after July 1, 1985, may not exceed fifty years. The  
15 duration of a wetlands reserve program easement acquired by the federal  
16 government pursuant to the Food, Agriculture, Conservation, and Trade Act of  
17 1990 after July 1, 1991, may not exceed thirty years.

18 **SECTION 2. Definitions.** As used in sections 2 through 6 of this Act, unless the  
19 context otherwise requires:

20 1. "Conservation easement" means a nonpossessory interest of a holder in real  
21 property imposing limitations or affirmative obligations the purposes of which  
22 include retaining or protecting natural, scenic, or open-space values of real  
23 property, assuring its availability for agricultural, forest, recreational, or open-space  
24 use, protecting natural resources, maintaining or enhancing air or water quality, or

preserving the historical, architectural, archaeological, or cultural aspects of real property.

2. "Holder" means:

- a. A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or
- b. A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

3. "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

**SECTION 3. Creation, conveyance, acceptance, and duration.**

1. Except as otherwise provided in sections 2 through 6 of this Act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.
2. No right of duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.
3. Except as provided in subsection 2 of section 4 of this Act, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.
4. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

**SECTION 4. Judicial actions.**

1. An action affecting a conservation easement may be brought by:

a. An owner of an interest in the real property burdened by the easement;

b. A holder of the easement;

c. A person having a third-party right of enforcement; or

d. A person authorized by other law.

2. Sections 2 through 6 of this Act do not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

**SECTION 5. Validity.** A conservation easement is valid even though:

1. It is not appurtenant to an interest in real property;

2. It can be or has been assigned to another holder;

3. It is not of a character that has been recognized traditionally at common law;

4. It imposes a negative burden;

5. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

6. The benefit does not touch or concern real property; or

7. There is no privity of estate or of contract.

**SECTION 6. Applicability.**

1. Sections 2 through 6 of this Act apply to any interest created after the effective date of this Act which complies with sections 2 through 6 of this Act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

2. Sections 2 through 6 of this Act apply to any interest created before the effective date of this Act if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

3. Sections 2 through 6 of this Act do not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.