

Sixty-first  
Legislative Assembly  
of North Dakota

**SENATE BILL NO.**

Introduced by

Senator Triplett

Representative Keiser

1 A BILL for an Act to amend and reenact sections 47-05-02.1 and 55-10-08 of the North Dakota  
2 Century Code, relating to restrictions on easements, servitudes, and nonappurtenant  
3 restrictions.

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

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

7 **47-05-02.1. Requirements of easements, servitudes, or nonappurtenant**  
8 **restrictions on the use of real property.**

9 1. Real property easements, servitudes, or any nonappurtenant restrictions on the  
10 use of real property, which become binding after July 1, 1977, ~~shall be~~ are subject  
11 to the requirements of this section. These requirements are deemed a part of any  
12 agreement for ~~such~~ these interests in real property whether or not printed in a  
13 document of agreement.

14 ~~4-~~ The area of land covered by the easement, servitude, or nonappurtenant restriction  
15 on the use of real property ~~shall~~ must be properly described and ~~shall~~ must set out  
16 the area of land covered by the interest in real property.

17 ~~2-~~ The duration of the easement, servitude, or nonappurtenant restriction on the use  
18 of real property must be specifically set out, ~~and in no case may the duration of any~~  
19 ~~interest in real property regulated by this section exceed ninety-nine years.~~ The  
20 duration of an easement for a waterfowl production area acquired by the federal  
21 government, and consented to by the governor or the appropriate state agency  
22 after July 1, 1985, may not exceed fifty years. The duration of a wetlands reserve  
23 program easement acquired by the federal government pursuant to the Food,

Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.

~~3. 2.~~ 2. ~~No~~ An increase in the area of real property subject to the easement, servitude, or nonappurtenant restriction ~~shall~~ may not be made except by negotiation between the owner of the easement, servitude, or nonappurtenant restriction and the owner of the servient tenement.

**SECTION 2. AMENDMENT.** Section 55-10-08 of the North Dakota Century Code is amended and reenacted as follows:

**55-10-08. Duties of the state and political subdivisions in regard to state historic sites - Historic easements - Prohibitions.**

1. The state, its departments and agencies, and each political subdivision are by this chapter notified of the existence of state historic sites on land and water areas in North Dakota listed in the state historic sites registry.
2. The state or a political subdivision may not demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry as a state historic site without first obtaining the prior approval from the director of the state historical society upon authorization of the state historical board, unless section 55-02-07.2 applies to the site. The state and political subdivisions shall cooperate with the director of the state historical society in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves the demolition or alteration.
3. The state or a political subdivision may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the director of the state historical society. A historic easement is:
  - a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic aspects of the property as so restored, reconstructed, or improved;

- b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided, that no right or duty in favor of or against a holder or another party having a right of enforcement arises under a historic easement before it is accepted by the holder and the acceptance is recorded;
    - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
    - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or a political subdivision;
    - e. Binding upon the holder of the servient tenement and that person's successors and assigns;
    - f. Limited to a term of years provided in the grant and approved by the director of the state historical society, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
    - g. ~~Subject~~ Not subject to no any other legal limitation upon the duration of estates or of restraint on the alienation thereof, ~~except the limitation contained in section 47-05-02.4 of estates;~~ and
    - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.
  4. A historic easement is valid even though:
    - a. It is not appurtenant to an interest in real property;
    - b. It can be or has been assigned to another holder;
    - c. It is not of a character that has been recognized traditionally at common law;
    - d. It imposes a negative burden;
    - e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
    - f. The benefit does not touch or concern real property; or

1           g. There is no privity of estate or of contract.

2           5. A project comprising the acquisition of a state historic site or of a historic easement  
3           with reference thereto, and the restoration, reconstruction, and improvement of the  
4           site and buildings and structures thereon to preserve physical characteristics of  
5           historic importance, is declared to be a proper and necessary purpose for the  
6           expenditure of public funds. The proceeds of tax increments or bonds or both may  
7           be expended by a city for such a project within an urban renewal area when  
8           determined by the governing body to be desirable for the redevelopment,  
9           rehabilitation, and conservation of the area in accordance with chapter 40-58.

10          6. If any state agency or department or a political subdivision objects to any decision  
11          of the state historical board to disallow alteration or demolition of a site listed on the  
12          state historic sites registry, the objecting party may submit the objection to  
13          arbitration. Arbitration may also be demanded by either the board or the objecting  
14          party if the board or the objecting party determines that the other has failed to  
15          cooperate in identifying or implementing reasonable alternatives to demolition or  
16          alteration. The party desiring arbitration shall make a written demand therefor of  
17          the other and in the demand shall name three arbitrators. The demand must also  
18          set forth the objections that the party desires to submit to arbitration, with reference  
19          to the particular state historic site. The demand must be made within ninety days  
20          of a decision by the board. The demand must be served upon the other party,  
21          which, within ten days, shall name in writing three arbitrators, and set forth in  
22          writing its response to the objections set forth in the demand served upon it and  
23          any additional objections that it desires to submit to arbitration on its part. The six  
24          arbitrators selected shall name a seventh arbitrator. If the party proceeded against  
25          fails or refuses to name three arbitrators, the moving party may apply ex parte to  
26          the judge of the district court of the county in which the state historical site in  
27          question, or any part thereof, is located, for the appointment of the unnamed  
28          arbitrators. If upon the appointment of three arbitrators by each of the parties, the  
29          six have been unable to agree upon a seventh arbitrator within five days, either  
30          party, upon five days' notice may apply to the district court for the appointment of  
31          the seventh arbitrator. The political subdivision may select its arbitrators from

1 among the governing board of the affected political subdivision, from any regular or  
2 special committee appointed by the governing board, whether serving on such  
3 governing board or not, or from any combination thereof. A state agency may  
4 select its arbitrators from its officers or employees. The state historical board may  
5 select its arbitrators from among the board itself, from an executive committee of  
6 the board, or from any combination thereof. When a panel of arbitrators has been  
7 appointed, a submission in writing must be acknowledged by the parties in the  
8 same manner as a conveyance of real property and may fix the time on or before  
9 which the award must be made. The submission must provide for the entry of  
10 judgment upon the award by the district court of the county within which the state  
11 historical site or some part thereof is located. The submission must also provide  
12 that each party shall bear its own arbitration costs and expenses, however, the  
13 costs and expenses relating to the seventh arbitrator must be borne equally by  
14 both parties to the dispute. The seven arbitrators shall proceed to resolve the  
15 controversies brought before them, and the decision of the arbitrators, or a majority  
16 of them, must be given in writing to the parties concerned and is binding upon both  
17 parties. Thereafter, the arbitration must proceed in accordance with chapter  
18 32-29.2.