

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2362

Introduced by

Senators Triplett, Taylor, Erbele

Representatives Keiser, Schmidt

1 A BILL for an Act to create and enact sections 47-05-18, 47-05-19, 47-05-20, 47-05-21, and
2 47-05-22 of the North Dakota Century Code, relating to the Uniform Conservation Easement
3 Act; and to amend and reenact section 47-05-02.1 of the North Dakota Century Code, relating
4 to requirements for easements, servitudes, and nonappurtenant restrictions.

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

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

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

- 10 1. Real property easements, servitudes, or any nonappurtenant restrictions on the use of
11 real property, which become binding after ~~July 1, 1977~~ July 31, 2011, ~~shall be~~
12 subject to the requirements of this section. These requirements are deemed a part of
13 any agreement for ~~such~~ these interests in real property whether or not printed in a
14 document of agreement.
- 15 ~~4.~~ The area of land covered by the easement, servitude, or nonappurtenant restriction on
16 the use of real property ~~shall~~ must be properly described and ~~shall~~ must set out the
17 area of land covered by the interest in real property.
- 18 ~~2.~~ The duration of the easement, servitude, or nonappurtenant restriction on the use of
19 real property must be specifically set out; and ~~in no case may~~ the duration of any
20 interest in real property regulated by this section may not exceed ninety-nine years for
21 real property on which a crop, including a forage crop, has been planted in the fifteen
22 years before the created interest. The duration of an easement for a waterfowl
23 production area acquired by the federal government, and consented to by the
24 governor or the appropriate state agency after July 1, 1985, may not exceed fifty

years. The duration of a wetlands reserve 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. ~~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. Section 47-05-18 of the North Dakota Century Code is created and enacted as follows:

47-05-18. Definitions.

As used in sections 47-05-18 through 47-05-22, unless the context otherwise requires:

1. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability 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.
2. "Holder" means a governmental body empowered to hold an interest in real property under the laws of this state or the United States, or 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. Section 47-05-19 of the North Dakota Century Code is created and enacted as follows:

1 **47-05-19. Creation, conveyance, acceptance, and duration.**

- 2 1. Except as otherwise provided in sections 47-05-18 through 47-05-22, a conservation
3 easement may be created, conveyed, recorded, assigned, released, modified,
4 terminated, or otherwise altered or affected in the same manner as other easements.
5 2. A right or duty in favor of or against a holder and a right in favor of a person having a
6 third-party right of enforcement may not arise under a conservation easement before
7 its acceptance by the holder and a recordation of the acceptance.
8 3. Except as provided in subsection 2 of section 47-05-20 and section 47-05-02.1, a
9 conservation easement is unlimited in duration unless the instrument creating it
10 otherwise provides.
11 4. An interest in real property in existence at the time a conservation easement is created
12 is not impaired by it unless the owner of the interest is a party to the conservation
13 easement or consents to it.

14 **SECTION 4.** Section 47-05-20 of the North Dakota Century Code is created and enacted as
15 follows:

16 **47-05-20. Judicial actions.**

- 17 1. An action affecting a conservation easement may be brought by:
18 a. An owner of an interest in the real property burdened by the easement;
19 b. A holder of the easement;
20 c. A person having a third-party right of enforcement; or
21 d. A person authorized by other law.
22 2. Sections 47-05-18 through 47-05-22 do not affect the power of a court to modify or
23 terminate a conservation easement in accordance with the principles of law and
24 equity.

25 **SECTION 5.** Section 47-05-21 of the North Dakota Century Code is created and enacted as
26 follows:

27 **47-05-21. Validity.**

28 A conservation easement is valid even though:

- 29 1. It is not appurtenant to an interest in real property;
30 2. It can be or has been assigned to another holder;
31 3. It is not of a character that has been recognized traditionally at common law;

- 1 4. It imposes a negative burden;
- 2 5. It imposes affirmative obligations upon the owner of an interest in the burdened
- 3 property or upon the holder;
- 4 6. The benefit does not touch or concern real property; or
- 5 7. There is no privity of estate or of contract.

6 **SECTION 6.** Section 47-05-22 of the North Dakota Century Code is created and enacted as
7 follows:

8 **47-05-22. Applicability.**

- 9 1. Sections 47-05-18 through 47-05-22 apply to any interest created after July 31, 2011,
- 10 whether designated as a conservation easement or as a covenant, equitable
- 11 servitude, restriction, easement, or otherwise.
- 12 2. Sections 47-05-18 through 47-05-22 apply to any interest created before July 31,
- 13 2011, if it would have been enforceable had it been created after its effective date
- 14 unless retroactive application contravenes the constitution or laws of this state or the
- 15 United States.
- 16 3. Sections 47-05-18 through 47-05-22 do not invalidate any interest, whether
- 17 designated as a conservation or preservation easement or as a covenant, equitable
- 18 servitude, restriction, easement, or otherwise, that is enforceable under other law of
- 19 this state.