

**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 ~~bear~~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 ~~shall~~must be properly described and shall ~~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

1 years. The duration of a wetlands reserve program easement acquired by the federal  
2 government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990  
3 after July 1, 1991, may not exceed thirty years.

4 ~~3-2.~~ ~~No~~An increase in the area of real property subject to the easement, servitude, or  
5 nonappurtenant restriction ~~shall~~may not be made except by negotiation between the  
6 owner of the easement, servitude, or nonappurtenant restriction and the owner of the  
7 servient tenement.

8 **SECTION 2.** Section 47-05-18 of the North Dakota Century Code is created and enacted as  
9 follows:

10 **47-05-18. Definitions.**

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

- 12 1. "Conservation easement" means a nonpossessory interest of a holder in real property  
13 imposing limitations or affirmative obligations the purposes of which include retaining  
14 or protecting natural, scenic, or open-space values of real property; assuring its  
15 availability for agricultural, forest, recreational, or open-space use; protecting natural  
16 resources; maintaining or enhancing air or water quality; or preserving the historical,  
17 architectural, archaeological, or cultural aspects of real property.
- 18 2. "Holder" means a governmental body empowered to hold an interest in real property  
19 under the laws of this state or the United States, or a charitable corporation, charitable  
20 association, or charitable trust, the purposes or powers of which include retaining or  
21 protecting the natural, scenic, or open-space values of real property; assuring the  
22 availability of real property for agricultural, forest, recreational, or open-space use;  
23 protecting natural resources; maintaining or enhancing air or water quality; or  
24 preserving the historical, architectural, archaeological, or cultural aspects of real  
25 property.
- 26 3. "Third-party right of enforcement" means a right provided in a conservation easement  
27 to enforce any of its terms granted to a governmental body, charitable corporation,  
28 charitable association, or charitable trust, which, although eligible to be a holder, is not  
29 a holder.

30 **SECTION 3.** Section 47-05-19 of the North Dakota Century Code is created and enacted as  
31 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.