

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. The duration of a conservation
4 easement as defined in section 47-05-02.2 may not exceed forty years.

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

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

11 ~~47-05-18. Definitions.~~

12 ~~3.~~ 3. As used in ~~sections 47-05-18 through 47-05-22~~this section, unless the context
13 otherwise requires:

14 ~~1.~~ a. "Conservation easement" means a nonpossessory interest of a holder in real
15 property imposing limitations or affirmative obligations the purposes of which
16 include retaining or protecting natural, scenic, or open-space values of real
17 property; assuring its availability for agricultural, forest, recreational, or
18 open-space use; protecting natural resources; maintaining or enhancing air or
19 water quality; or preserving the historical, architectural, archaeological, or cultural
20 aspects of real property.

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

29 ~~3.~~ "Third-party right of enforcement" means a right provided in a conservation easement
30 to enforce any of its terms granted to a governmental body, charitable corporation,

1 charitable association, or charitable trust, which, although eligible to be a holder, is not
2 a holder.

3 ~~— **SECTION 3.** Section 47-05-19 of the North Dakota Century Code is created and enacted as~~
4 ~~follows:~~

5 ~~— **47-05-19. Creation, conveyance, acceptance, and duration.**~~

6 ~~— 1. Except as otherwise provided in sections 47-05-18 through 47-05-22, a conservation~~
7 ~~easement may be created, conveyed, recorded, assigned, released, modified,~~
8 ~~terminated, or otherwise altered or affected in the same manner as other easements.~~

9 ~~— 2. A right or duty in favor of or against a holder and a right in favor of a person having a~~
10 ~~third-party right of enforcement may not arise under a conservation easement before~~
11 ~~its acceptance by the holder and a recordation of the acceptance.~~

12 ~~— 3. Except as provided in subsection 2 of section 47-05-20 and section 47-05-02.1, a~~
13 ~~conservation easement is unlimited in duration unless the instrument creating it~~
14 ~~otherwise provides.~~

15 ~~— 4. An interest in real property in existence at the time a conservation easement is created~~
16 ~~is not impaired by it unless the owner of the interest is a party to the conservation~~
17 ~~easement or consents to it.~~

18 ~~— **SECTION 4.** Section 47-05-20 of the North Dakota Century Code is created and enacted as~~
19 ~~follows:~~

20 ~~— **47-05-20. Judicial actions.**~~

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

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

23 ~~— b. A holder of the easement;~~

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

25 ~~— d. A person authorized by other law.~~

26 ~~— 2. Sections 47-05-18 through 47-05-22 do not affect the power of a court to modify or~~
27 ~~terminate a conservation easement in accordance with the principles of law and~~
28 ~~equity.~~

29 ~~— **SECTION 5.** Section 47-05-21 of the North Dakota Century Code is created and enacted as~~
30 ~~follows:~~

1 ~~— **47-05-21. Validity.**~~

2 ~~— A conservation easement is valid even though:~~

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

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

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

6 ~~— 4. It imposes a negative burden;~~

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

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

10 ~~— 7. There is no privity of estate or of contract.~~

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

13 ~~— **47-05-22. Applicability.**~~

14 ~~— 1. Sections 47-05-18 through 47-05-22 apply to any interest created after July 31, 2011,~~
15 ~~whether designated as a conservation easement or as a covenant, equitable~~
16 ~~servitude, restriction, easement, or otherwise.~~

17 ~~— 2. Sections 47-05-18 through 47-05-22 apply to any interest created before July 31,~~
18 ~~2011, if it would have been enforceable had it been created after its effective date~~
19 ~~unless retroactive application contravenes the constitution or laws of this state or the~~
20 ~~United States.~~

21 ~~— 3. Sections 47-05-18 through 47-05-22 do not invalidate any interest, whether~~
22 ~~designated as a conservation or preservation easement or as a covenant, equitable~~
23 ~~servitude, restriction, easement, or otherwise, that is enforceable under other law of~~
24 ~~this state.~~