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OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

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2001 HOUSE NATURAL RESOURCES

HB 1276

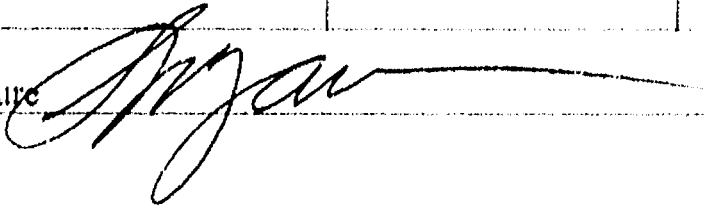
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

☐ Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	x		46 to 2893
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: Will call the Natural Resources Committee to order. Call the roll. Open the hearing on HB 1276. Anyone here to testify in favor of this bill.

Wes Tossett: There is a law in ND that you cannot have a commercial lease for longer than 10 years. This is also true of agricultural leases. In agriculture leases, with cash rent, 3 to 5 years is as long as anyone cares to enter in to. As far as crop share leases you can renew these for as long as 20 years. HB1276 is not necessarily on leases, but on easements, a partial lease of property. Leases tend to be short. Farm ownership is about 30 years. CRP is a ten year contract. Some conservationists say CRP is the best thing to come along since the Duck Stamp. All we are

asking for today is a balance. Good easements make for a good working partnership, if leases are too long the guy that holds that 20 - 30 can be pretty incentive to the things that change.

Rep. DeKrey: I have some real concerns about tying up agricultural land forever. Right now if you take a Federal grassland easement, that easement is on that land forever. It is a perpetual easement. Many of these easements are being paid for by Ducks Unlimited and other contribution groups. Which I don't have a problem with. The Federal government writes these easements and under my bill, if they were to take the easements themselves, we could keep it in the state, we could control the number of years and I think if people had that option to do that we could perhaps stop some of the perpetual easements which I think aren't a good thing for the farmer or the state in the long run. One of the things we talked a lot about this session is wind energy. That might be a big thing in ND. If you take a Federal grassland easement right now you will sign a paper that will not allow you to have wind energy on that parcel of land. Land owners could be taking it for financial problems or just because he believes in the program. Wind energy comes along and get developed in 10-15 years and he will be excluded from that income because he has a grassland easement. I would hope when we work with non-profits in this state that that is something we wouldn't have to place in easements. I think it just makes sense that every generation should be able to decide what the land use of their own farm or ranch is going to be. If you take a perpetual easement you have excluded anyone from ever making a decision on that property forever. I think that is a little bit long. Another thing, when you sign a Federal easement there is no protection there for hunters, hikers, or anything whatsoever. It doesn't say you can't post your land, but it isn't going to be any more open for hunting then it was before. That could be part of a nonprofit lease, but not a Federal lease. It makes it much more flexible for a

nonprofit group and the owner to come to an agreement on their own, tailor made for the landowner. Federal leases are not that way. That is nation wide.

Chairman Rennerfeldt: Any questions from the committee?

Rep. Winrieh: As I read this bill, this would place restrictions on easements that could be granted to nonprofit organizations?

Rep. DeKrey: That is right.

Rep. Winrieh: Then I don't understand how that is going to encourage nonprofit easements and discourage Federal easements?

Rep. DeKrey: Because farmers are extremely wary of getting into contracts with the Federal government. That is one of the biggest hang-ups. If they know it is perpetual and a one time payment and that's it. On these easements would restrict the number of years they could take it, but the farmer can go into it with the provision in the bill he can buy his way out of it. He can't do that on a Federal lease.

Rep. Porter: If we are allowing the buy back of the easements based on percentages, what would it matter having the time period up front? Is there any reason you started this one at 10?

Rep. DeKrey: I started this one at 10 years because I matched it up with CRP and other parts of the Code where you can only write a lease for maximum of ten years. I am trying to keep it consistent, but I am open to amendments.

Chairman Rennerfeldt: Any further questions of the committee? Anyone else in favor of this bill?

Wes Tossett: If you have an unduly long lease, then you hold the paper. The longer the lease, the longer the up front payment you have, I would like to keep that at 10 years. If it is too long, then you don't have the farmer caring about future generations. I guess I will summarize this by

saying if the preservationists can't afford a stamp every 10 years to get that renewed. Non profits are always crying about how little money they have, but they never pay any taxes. I guess with a 10 years limit you can keep both sides humble. I ask for your support on a 10 year limit.

Rep. Nottestad: Will you provide documentation to the committee that the non profits aren't willing to pay the taxes, excluding Federal government, that would not be considered a nonprofit.

Tossett: There was a Senate bill passed that they agreed to pay the taxes.

Rep. Nottestad: Sir, that bill mandates they pay their taxes. It doesn't say they agreed. You made a past tense statement, I would like documentation to support that statement. You said they aren't willing to pay in lieu of taxes.

Dennis Miller - Landowners Association of ND: (See written testimony).

Rep. Keiser: Are you telling me that individual farmers does not have the freedom right now to choose all of things when negotiating a lease with a nonprofit?

Miller: Yes, that is certainly the question. We have a number of instances where we feel there are certain agencies that create willing sellers, meaning their organizations working against the outlet on Devils Lake and yet they are right there to buy up all the land as it is flooded. Sometimes it is not an issue of a willing buyer, willing seller. It is an issue of an organization manipulating the market so willing sellers are created. We support a landowners rights to do whatever he wants. In the same sense there are economic instances where organizations have the power to create willing sellers and we do not support those instances.

Chairman Rennerfeldt: Any questions of the committee? Anyone else to testify in favor?

Eric Aasmundstad - ND Farm Bureau: We certainly support HB 1276 in as much as it does limit the amount of time a conservation easement exists. I want to differentiate between the Federal Government and the non profits in the way they handle their cash payments. We are very

supportive of the fact that the non profits do pay their fair share of taxes. The US Government does not. And yes, the things contained here can be negotiated today. The nonprofit organizations that have the money to take these easements are not willing to sign short term leases. They prefer perpetuity. It is our feeling that if our state law read that they could carry a lease for 10 years, and that is long enough, there is not reason for the operator of that property not to re-up the easement. We feel that we have what they want and if our state law says 10 years they will come around.

Chairman Rennerfeldt: Questions of the committee? We will have to take the opposition to this bill now.

Jim Horner - Lobbyist for the ND Land Title Assn. And On behalf of Malcom Brown, ND Bar Association: We are not for or against this bill. We would like an amendment to this bill. (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Keith Trego - Executive Director of the ND Wetlands Trust: (See written testimony).

Chairman Rennerfeldt: Any questions of the committee? Anyone else care to speak in opposition to this bill?

Bill Pfeifer - ND Chapter of the Wildlife Society: (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Joe Satrom - Director of the Land Protection Program Great Plains Office of the Ducks

Unlimited, Inc.: We support a Do Not Pass. (See written testimony).

Chairman Rennerfeldt: Any questions of the committee?

Rep. Kelsh: What is the status of these easements with regard to wind energy development?

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Satrom: As was eluded to, Ducks Unlimited are providing resources for the permanent grassland easement program of the US Fish and Wildlife Service on the Missouri Coteau Landscape of Central ND. As an organization we are very interested in a variance that would allow development on a limited basis on grassland easements held by the Fish and Wildlife Service. All of this is under consideration, it sounds as though that will be worked out as Bill suggested. We believe it can be done in a way that it will not affect the value of the easement relative to the natural qualities of the land.

Chairman Rennerfeldt: Any further questions of the committee?

Andy Mork - Chairman of the BOMMM Joint Board: I am neither in support or opposition to this bill but as a matter of information. There will be two other easement bills in the Senate, ours is 2266. If you pass this bill in this form it would be in conflict with our bill. I would suggest you may have to work with other versions of the bill, so you could come up with a clean bill. We are asking for perpetual easements for riparian land along the Missouri River in that area. We can work with you - Mike Dwyer represents our board.

Chairman Rennerfeldt: Any questions of the committee?

Rep. Winrich: What was the number of that bill?

Mork: 2266 is our bill and another one 2319.

Chairman Rennerfeldt: I will close the hearing on HB 1276.

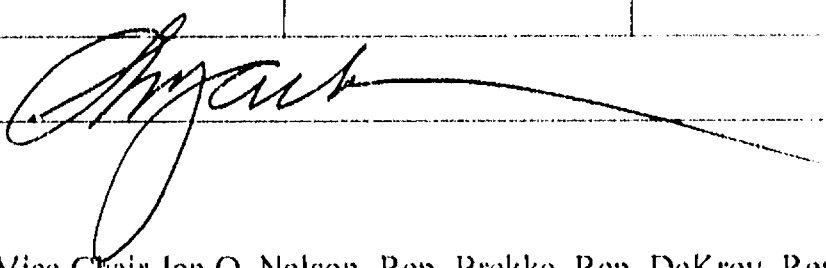
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
3		x	1183 to 5387
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich,

Chairman Rennerfeldt: Okay, let's do 1276.

Rep. DeKrey: I move an amendment, line 17, scratch 10 insert 30. Line 17 scratch 1/10, insert 1/30 and line 16 scratch 10, insert 30.

Vice Chair Nelson: I second.

Rep. DeKrey: The reason I am doing that is because I talked to quite a few groups around here and I think that is a reasonable compromise. The ag groups are pretty much stuck on 10 because it matches CRP, it matches the number of years that contractors have in other parts of state law. That is where the ten came about, they are talking fifty years because they want a generation and

one half, so I compromised with 30 years so each generation can make their own decisions on these easements. I think it makes a lot more sense than the bill we heard today on perpetual easements. I can't see how anyone can stand up with a straight face and tell us perpetual easements are good for North Dakota. They have far more law suits in District 10 than in this state that anything the Federal Government has done to this state. Why we would want to invite that into the Southwestern part of the state, I have no idea.

Vice Chair Nelson: I move a Do Pass as amended.

Chairman Rennerfeldt: We need to move the amends first. Do we have a move on a Do Pass on amendments?

Rep. DeKrey: I move a do pass on the amendments.

Vice Chair Nelson: I second that.

Chairman Rennerfeldt: We have a do pass on the amendments, all in favor signify by saying Aye. Opposed? Amendments passed.

Vice Chair Nelson: I move a Do Pass as amended on HB 1276.

Rep. DeKrey: I second.

Rep. Winrich: I guess I have to raise the same question with this bill I raised earlier, about the bill we heard this morning. I am not sure what the difference is? I don't own any agricultural land, but I do own property in Grand Forks. I know that in residential and commercial property in cities, properties carry with them something called a restrictive covenant with the deed. That is a condition that exists in perpetuity. In fact, regulates what can be done with the property, whether it can be subdivided from its current size. I guess I don't understand, if we permit restrictive covenants, which is perpetual condition or restriction on piece of property, why aren't

perpetual easements permitted in other areas. What is the difference between a restrictive covenant and an easement, legally?

Chairman Rennerfeldt: I tried to get a hold of Jeff Nelson.

Rep. DeKrey: We have dealt with this before on Judiciary Committee, and when you get the covenants in residential areas, it is to protect the neighborhood from the guy that comes in and builds the gaudy house. You enter that covenant when you buy the property. The thing about an easement is, it isn't much different. But, the question is, why do we restrict in town, and you guys don't want to be restricted in the country. I guess that is why we live out in the country. I don't want to impose my country rules on your city. I think we should be able to do whatever we want around here. All I am saying is don't bring your rules out to my farm, that is why I am living out here.

Vice Chair Nelson: I think there are a couple things, my previous argument works a lot better now, this does move towards middle ground. I believe the Wetlands Trust entered a pilot project, I think they have 14 easements that are 30 years in length that Gov. Schaffer accepted a year ago. This seems to be an area of compromise. This generational type of easement. It think it fits the argument from the landowners standpoint, whether it is good or bad to enter into an agreement, you have that right to do with what you want with that land while you are on it. On the other side you have the buy back in this bill, it does have a burden of responsibility from the people holding the easement and it does end. It has to be renewed. I think that ensures there is going to be some responsible behavior from the people holding the easement. On a perpetual easement you don't know how things change, I am scared to death of a perpetual easements. I think this is one of the area where we may not get to the perpetual stages, it does give some ground. Let's see if we can

work this thing out. I think this is around the area of years which is a good place to start. I am going to support the Do Pass.

Rep. Droydal: I am struggling with this particular bill. I don't like nonprofit organizations very much. On the other hand we require them to pay in lieu of taxes and be good neighbors. They are a legal entity, just as my farm is a legal entity. So I really have a big problem saying we are going to treat you different. Sure it is nice to pick on the little guy, somewhere here we are all equal on here. Since we recognize them as a legal institution, don't we have to treat them equal? I am afraid I am going to vote against the Do Pass recommendation. I understand where they are coming from.

Rep. DeKrey: This bill is about choice. Offering landowners a choice, the 30 years easement on grasslands and the 30 year easements on wetlands would be a choice you could take, that a nonprofit could fund. The other choice of perpetual is still out there. If you want to take a grassland or wetland easement out there, the Federal government will beat down your door to get there and get that land tied up. It has nothing to do with conservation, it has everything to do with control. That is why they don't like the lesser year easements. If you take a Federal easement that is perpetual, you will sign an agreement that is just like every other persons agreement. You can't put a windmill on it, you can't do this, you can't do that. This would allow our own instate nonprofit organizations to come up with an easement between a willing buy and a willing seller, to come up with the terms that they want. One of the things that Ducks Unlimited wants to see is more hunting opportunities, but they turn around and they fund these Federal Wetlands easements and these Federal Grasslands easements and other than paying the bill, they get nothing out that. If that land doesn't get disturbed, the land owner has every right to post that land, and you can't go on there and hunt. That is your dollar as a hunter that went to pay for that.

With this easement, if the landowner and the local non profit can agree, that could be part of the easement, that it could be left open for public hunting. That is something they can agree upon mutually. You are not going to see that on a perpetual agreement. This is about choice. What's wrong with choice. If you don't like 30 years go perpetual, it available. But at least, if you don't like perpetual, there's still a chance it might get an easement on it if you can go thirty years. By the way, we do not make non profits pay taxes, they do that voluntarily, it would take a Constitutional Amendment to make them pay taxes.

Rep. Droydal: I thought we didn't have perpetual agreements in ND?

Rep. DeKrey: We sure do. The only thing we don't have perpetual agreements on is if we pass a law before the Federal makes a law, then they have to respect our law. But if the Federals put theirs in place first, then you can't usurp their authority. The only thing restricted at all is the forest land, because we passed our law on restricting that before they got theirs on the book. But as far as perpetual easements, you can take a perpetual easement today on wetlands or grasslands. They are still buying them and still looking for people to take them.

Rep. Winrich: We have gone significantly past the point where I wanted to make this response, but I do want to respond to Rep. DeKrey's comment on restrictive covenants and not imposing the same limitations on agricultural land that is on city land. The point that I wanted to make was that this is not a limitation, there is that option available to landowners of residential and commercial property in cities under certain circumstances, they can enter into these kinds of agreements and impose conditions on the property. That option under this law would not be available to owners of agricultural land. They would be restricted as to the term of whatever conditions they can put on their land. So this is in fact puts more restrictions on the owners of rural property than what I see is placed on the owners of urban property.

Rep. DeKrey: What restrictions? This is a private lease between a nonprofit and a ND farmer. They sit down and write the terms. The only one that is restrictive is the Federal perpetual lease, a standard easement agreement.

Rep. Winrich: We heard testimony this morning from representatives of various organizations that in fact the perpetual easement is a useful tool for what they want to do to preserve bio-diversity and certain kinds of property. That tool is prohibited by this law.

Rep. DeKrey: How can it be prohibited, it's out there. It's a Federal lease and it is not going to change. If they want to take the perpetual one, they can. All this one does is give an option to a nonprofit and a farmer to sit down together and write a lease they can agree on. If they want to 30 years, fine. You have a whole lot of landowners out there that won't even consider a perpetual easement.

Rep. Winrich: The perpetual easement is only available through the Federal Government.

Correct?

Rep. DeKrey: Not exactly correct, but true. Yes, you have to go through the Federal Government to get them.

Rep. Winrich: They have to hold them. Some of these organizations don't wish to do that. They don't want a perpetual easement that is held by the Federal Government. But would rather enter into a land trust of their own control and engage in such easements. That option is taken away from a landowner under this law. We are restricting the right of that landowner.

Rep. DeKrey: We are restricting the land owner the right to enter into an easement other than the Federal governments. (more discussion)

Rep. Nottestad: I think we need to go back to a statement that was made by Joe Satrom this morning. It wasn't about this bill, but another one. We asked about shorter term easements and

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Hearing Date February 1, 2001

why they weren't interested in them. His answer was this, that they aren't interested in them because the people that fund them would not fund under that. I don't consider this a compromise at all. What's going to happen is that you will not get 30 year easements because the money won't be there for them. They can't do in thirty years what they want to, number 1. Number 2, you will go more toward the Federal perpetual, which is the last thing that many of you around this table want. Thirdly, if it comes to one or the other, 30 is not going to be available because of the money, the need to supply more property will take place. I don't believe this 30 year easement is a compromise, it is just another way of shutting it down, or driving them into perpetuities. Which is seemingly not the most popular thing in the world.

Rep. Porter: I like this one better than the last couple. I guess, I don't agree with the time frame, in testimony, Mr. Trego from the Wetlands Trust stated that they do both 30 and 50 years leases. I don't see what the problem is in changing to what the Wetlands Trust wanted and put 50 years in. Because the buy back provision is in there, you could have this as a 100 year as long as you have the buy back provision, it is that kind of lease. I think that we are being a little unreasonable putting thirty years in there when the whole point of it is, not the term of the lease, but by having the buy back provision in there.

Rep. DeKrey: If it were 50 years could you support it?

Rep. Porter: If this is 50 years, I probably would stand right beside you.

Rep. DeKrey: Make the amendment.

Rep. Wlrich: In reviewing my notes, I just noticed that Mr. Horner from the Land Title Association proposed an amendment related to indicating the record title holder, the title is subject to easement. Something technical that has to do with how deeds are registered. Perhaps we need to consider this. (some discussion).

Chairman Rennerfeldt: We have the motion and second withdrawn.

Rep. Winrich: I move for the amendment that Horner brought in.

Rep. Weiler: I second.

Chairman Rennerfeldt: Okay, we have motion for a do pass on the amendment and a second handed out by Jim Horner. All in favor signify by saying Aye. Opposed? Motion carries.

Vice Chair Nelson: I move to further amend line 16, second word, change from 30 to 50. Line 17 third word in, from 30 to 50 and on the third to the last word be changed to 1/50.

Rep. Porter: I second it. In looking at the buy back, I would be much more supportive of the buy back schedule of the Wetlands Trust rather than using the 1/50 scale which provides a penalty for the first 15 years and after that went straight out with the value of the easement. I think that would be fairer to the organization putting the resources into the program because their initial expenses would be in the first 15 years. There should be a stiffer penalty for walking away from it in the first time frame, than it would be if you walked out of it in the 2045.

Rep. DeKrey: I don't have any problem with that. I took it to the Legislative Council and had it drafted I had written on that piece of paper that there should be if it was bought back before midpoint that there should be a penalty. They should be able to recoup their expenses. So I don't have any problem with it.

Chairman Rennerfeldt: Any further amend...? (more discussion).

Rep. Winrich: I will withdraw my amendment.

Rep. Weiler: I will withdraw my second.

Chairman Rennerfeldt: We will table HB 1276 and try to get back to it tomorrow.

(discussion) Jeff Nelson is coming down to address the questions here. Okay, Jeff is here now.

There were some questions...

Rep. Winrich: We are considering a bill dealing with easements and restrictions on conservation easements... Basically restricting the ability of a land owner to enter into certain kinds of easements, I don't own ag land, but I do own property in Grand Forks. I do know that residential and commercial property sometimes.... Something called a restrictive covenant is sometime placed on the deed, which is a perpetual restriction or condition on how that property may be used. Legally, what is the difference between restrictive covenants and easements.

Jeff Nelson - Legislative Council: Briefly, I look at an easement as part of the bundle of property rights, one of the pieces of the right use of the property that the individual has as compared to the covenant which would be a restriction on the use of that property. For example, if an individual had title to the property in deed title absolute, he would have all the ownership interest in that property. He might give an easement to someone for example, if his neighbor needed to cross his property to get access to his property, he might grant his neighbor an easement, the right to use that property for access or egress for a certain amount of time. A covenant which would be a restriction on the use of the property and usually what we see today in covenants is the type of dwelling that can be put on piece of property. (gives example).

Rep. Winrich: Do we allow perpetual easements in residential and commercial properties in urban areas?

Nelson: I would have to look at the remainder of this section, but... (discussion on utility easements.) The restriction in this section applies to water fowl production areas and easements of that sort. But I would like to answer your questions fully, I should look at the remainder of the section fully.

Rep. Winrich: Another example that may fit here, I once owned a piece of property where the drive way was essentially on both properties. There was in fact an easements on both lots. Those kinds of easements are allowed under our law in perpetuity?

Nelson: Yes, it would probably say something in the easement to the effect that so long as the easement is needed. For example, if someone purchased both lots that might extinguish that easement.

Rep. Keiser: I was just going to say the same thing.

Rep. Galvin: A restrictive covenant can be changed at any time by mutual consent, can't it?

Nelson: I would have to do some more research on that. I know that sometimes in the covenant itself there are provisions that the covenant may be changed based on 50% or 70% of the people subject to the covenant. However, I think there are other covenants that cannot be changed.

Rep. Keiser: Once again, I don't think you can change the covenant, but you can get an exception to the covenant with a certain number of signatures of the people involved.

Nelson: The majority or a certain number of people could exempt themselves from the covenant.

Rep. Keiser: (cites example).

Rep. Galvin: I don't think that restrictive covenants have the protection of law? It is not written into a statute.

Nelson: I believe a covenant, as long as it is not contrary to public purpose would be protected by law, by the person's property rights. The types of covenants I was referring to earlier would be covenants bound to be against a public purpose restriction, racial covenants are the best known. They are no longer able to be enforced.

Rep. Galvin: We had a bill one time where the party had a restrictive covenant against dogs, and they wanted the local sheriff to enforce that and they could not do that.

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Nelson: I think what the difference is there is it would be up to property owners to enforce that covenant. A public officer would not enforce a private covenant. It would be up to them to enforce it.

Chairman Rennerfeldt: Any more questions of the committee? We will meet tomorrow at 8:30 tomorrow and work on some bills before hearings. Adjourned.

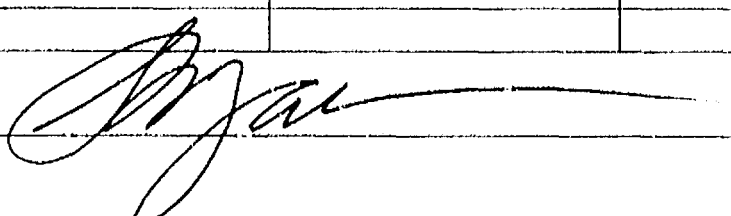
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 8, 2001

Tape Number	Side A	Side B	Meter #
I	x		45 to 525
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Drovdal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will call the Natural Resources Committee to order. Call the roll. I would like to take action on HB 1276. I have a set of amendments prepared by Rep. DeKrey.

Rep. DeKrey: This will take that easement bill of mine from 10 to 50 years, still has the buyback in it. That was a compromise position, I guess I had some people that hated the 10 years and they do support this. I will run this by the committee and see what happens.

Chairman Rennerfeldt: Any questions on the amendments?

Rep. Hanson: Line 14, is that 30 changed to 50? I don't see that in the amendments.

Rep. DeKrey: It's supposed to be.

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Rep. Hanson: It's not in the amendments.

(more discussion on line 14 of the amendments).

Chairman Rennerfeldt: Any other questions or discussion?

Vice Chair Nelson: I move the amendments and line 14 also amend 50 instead of 30 in the second word.

Rep. Porter: I second.

Chairman Rennerfeldt: All in favor of the amendments say Aye. Opposed? I think the Ayes have it. Should we do a roll call? Okay we have HB 1276 in front of us as amended.

Vice Chair Nelson: I move a Do Pass as Amended on HB 1276.

Rep. Porter: I second.

Rep. DeKrey: We didn't discuss at length, kicking this one out of committee to be an alternative to the ones already on the calendar. You can pick one or the other, get some options.

Chairman Rennerfeldt: I will call the roll for a Do Pass on HB 1276.

MOTION FOR A DO PASS AS AMENDED

YES, 9 NO, 6

CARRIED BY NELSON

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1276

Page 1, line 16, replace "ten" with "fifty"

Page 1, line 17, remove "for a ten-year period" and replace "one-tenth of the" with "a penalty plus the remaining value of the easement. For purposes of this provision, the penalty is thirty percent of the original easement value which must remain constant for the first one-fifth of the life of the easement and then decline uniformly to zero to the midpoint of the term of the easement. The easement value is the purchase price of the easement which is the original purchase price of the easement for the first half of the term of the easement and then declines uniformly to zero by the end of the term of the easement."

Page 1, remove line 18

Renumber accordingly

February 8, 2001

V/K
2/8/01

Page 1, line 14, ~~House Natural Resources Amendment to HB 1276~~ 2/8/01
overstrike "thirty" and insert immediately thereafter "fifty"

Page 1, line 16, replace "ten" with "fifty"

Page 1, line 17, remove "for a ten-year period" and replace "one-tenth of the" with "a penalty plus the remaining value of the easement. For purposes of this provision, the penalty is thirty percent of the original easement value which must remain constant for the first one-fifth of the life of the easement and then decline uniformly to zero to the midpoint of the term of the easement. The easement value is the purchase price of the easement which is the original purchase price of the easement for the first half of the term of the easement and then declines uniformly to zero by the end of the term of the easement."

Page 1, remove line 18

Renumber accordingly

Date: 2/8/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1276

House Natural Resources Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move a Do Pass As Amended

Motion Made By Rep. Nelson Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
Earl Rennerfeldt - Chairman	✓		Lyle Hanson		✓
Jon O. Nelson - Vice Chairman	✓		Scot Kelsh		✓
Curtis E. Brekke	✓		Lonnie B. Winrich		✓
Duane DeKrey	✓		Dorvan Solberg		✓
David Drovdal	✓				
Pat Galvin	✓				
George Keiser		✓			
Frank Klein	✓				
Darrell D. Nottestad		✓			
Todd Porter	✓				
Dave Weiler	✓				

Total (Yes) 9 No 6

Absent _____

Floor Assignment Rep. Nelson

If the vote is on an amendment, briefly indicate intent:

length of easement

REPORT OF STANDING COMMITTEE

HB 1276: Natural Resources Committee (Rep. Rennerfeldt, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1276 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "thirty" and insert immediately thereafter "fifty"

Page 1, line 16, replace "ten" with "fifty"

Page 1, line 17, remove "for a ten-year period" and replace "one-tenth of the" with "a penalty plus the remaining value of the easement. For purposes of this provision, the penalty is thirty percent of the original easement value which must remain constant for the first one-fifth of the life of the easement and then decline uniformly to zero to the midpoint of the term of the easement. The easement value is the purchase price of the easement which is the original purchase price of the easement for the first half of the term of the easement and then declines uniformly to zero by the end of the term of the easement."

Page 1, remove line 18

Renumber accordingly

2001 SENATE NATURAL RESOURCES

HB 1276

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1276

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-15-01

Tape Number	Side A	Side B	Meter #
1	X		Start - 12.0
3-16-01 1	X		Start - end
3-22-01 1	X		Start - 27.9
Committee Clerk Signature <i>Jamie James</i>			

Minutes:

SENATOR FISCHER opened the hearing on HB 1276.

SENATOR FISCHER asked the Committee to meet early so that Keith Trego could testify on HB 1276 a day early due to scheduling conflicts.

KEITH TREGO Executive Director of the North Dakota Wetlands Trust testified in opposition to HB 1276. This bill is about "term" easements and he explained the pilot program developed by the Wetlands Trust (See attached testimony). He has worked with the agricultural groups to develop the pilot program although they have not endorsed it because of their own bylaws. HB 1276 was amended in the house to reflect the Wetlands Trust Pilot Program, but they are still opposed to the bill because the their pilot program has not been tried and would rather the legislature wait to see the effectiveness before it is put into law.

SENATOR KELSH asked if there are any current easements that have buy back provisions.

KEITH TREGO stated he did not know of any.

SENATOR CHRISTMANN asked if he was okay with a 99 year easement instead of a perpetual easement.

KEITH TREGO answered that stand point of the value of the easement that would be correct, but the distinction would be the tax advantage of a perpetual easement. He stated that nothing needs to be done to state law to enable this pilot program, anything else put into law will only restrict the pilot program.

MARCH 16, 2001

SENATOR TOLLEFSON reopened the hearing on HB 1276.

REPRESENTATIVE DUANE DEKREY of District 14, cosponsor of HB 1276, a BILL RELATING TO CONSERVATION EASEMENTS. This bill is a compromise on easement law and changes the duration of an easements from 30 years to 50 years and has a buy back provision. There are permanent easements in North Dakota and this will present an option that is still long enough for the conservation groups to be interested. Farmer interests would rather see the 30 years easements without the buy backs because they would pretty much be in there.

CHUCK DAMSCHEN testified in support of HB 1276 if the bill is amended to change Line 14 back to read 30 years instead of 50 years. The same on Line 16 of the new bill and delete the underlined after the period after years. The 30 years is a mile stone and has been in place for 10 years and the change would make it uniform. The 30 years would take care of the buy back provision and is kind of an automatic generation time.

DENNIS MILLER, president of the "LAND" testified in support of HB 1276 as amendments suggested by Chuck Damschem.

WES TOSSETT of the "LAND" testified they were in support of HB 1276 until it was amended to 50 years. He testified the 30 years would be on generation of farming and a good easement contract could be renewed.

WADE MOZER representing the North Dakota Stockman's Association supported HB 1276 if amended to the suggestions of Chuck Damschen.

MALCOLM BROWN representing the Real Property Section of the State Bar Association of North Dakota testified in a neutral position of HB 1276, but has some suggestions for changes (See attached testimony).

GERALD REICHERT the North Dakota Field Representative of the Nature Conservancy testified in opposition to HB 1276 (See attached testimony). This bill will cut easements to 99 years, 50 years, or 30 years with or without buy back options. Under current law there are no easements less than 99 years and under this bill there will not be any new easements.

SENATOR CHRISTMANN asked what was the most common source of land acquisitions.

GERALD REICHERT stated that the Nature Conservancy is a very large and very corporate like. Funds are raised through private donations and private foundations. Land purchases are done with a willing seller and are required not to pay that more appraised value. Easements that are purchased are considered a charitable easement because it is perpetual there are tax benefits. There are no tax benefits for anything other than on perceptual easements.

JONATHON BRY representing the North Dakota Chapter of Sierra Club testified in opposition of HB 1276. (See attached testimony).

BILL PFEIFER representing the North Dakota Chapter of the Wildlife Society testified in opposition of HB 1276 (See attached testimony). HB 1276 will be meaningless and only be in the way of SB 2388 and HB 1276 should be killed.

SENATOR TOLLEFSON asked if a holder of an easement can transfer that easement.

GERALD REICHERT answered that a holder of an easement can transfer the right to hold the easement to enforce it, but a development right cannot be transferred or sold.

ANDY MORK of Mandan, ND chairman of the BOMMM Board (Burleigh, Oliver, Morton, McLean and Mercer Counties) testified in opposition of HB 1276. He feels it puts more restrictions on easements on willing sellers and willing buyers. He distributed a copy of an article from Ohlo (See attached).

MIKE DONAHUE representing the United Sportsmen's Club and the North Dakota Wildlife Federation testified in opposition of HB 1276 and asked the Committee to support SB 2388.

DENNIS MILLER of "LAND" asked to clear his name in regards to the incorrect information in a article quoted by Bill Pfeifer.

SENATOR FISCHER closed the hearing on HB 1276.

MARCH 22, 2001

SENATOR FISCHER reopened the discussion on HB 1276.

SENATOR TRAYNOR made a motion to "Adopt the amendment as proposed by Malcom Brown".

SENATOR KELSH second the motion.

Discussion was held for clarification of the different parts of the amendment suggested.

SENATOR FISCHER called for roll vote # 1 of HB 1276 indicating 7 YAYS, 0 NAYS, AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR made a motion for a "DO NOT PASS as Amended" of HB 1276.

SENATOR KELSH second the motion.

Discussion was held as to the passage of SB 2388 and Resolution Study. HB 1276 will provide nothing for landowners but SB 2388 will provide some options for landowners and what they might wish to do with their property.

SENATOR KELSH commented the passage of HB 1276 will set two sets of standards for easements. It would limit a conservation organization to a 50 year easement and a farm organization can have a perpetual easements.

SENATOR FISCHER the hope is the study will take a very thorough research and include all entities to come up with a good program. His fear that there might not be the access as needed and this might have some far reaching ramifications.

SENATOR CHRISTMANN asked if a group has an easement and do not want to give up for a highway or pipeline, will they be like any landowner and have the property condemned.

SENATOR TRAYNOR answered that there would be "eminent domain".

SENATOR FISCHER called for roll vote # 2 of HB 1276 indicating 6 YAYS, 0 NAYS, AND 0 ABSENT OR NOT VOTING.

SENATOR TRAYNOR will carry HB 1276.

Date:

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1276

Senate NATURAL RESOURCES

Committee

☐ Subcommittee on☐ Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded

By

[illegible]

Total (Yes)

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date:

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1276

Senate

Committee

or

**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded

By

[illegible]**Total**

(Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 22, 2001 2:04 p.m.

Module No: SR-50-6440
Carrier: Traynor
Insert LC: 10507.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1276, as engrossed: Natural Resources Committee (Sen. Fischer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1276 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "An individual granting an" with "The record title owner of the real property subject to the"

Page 1, line 24, after the underscored period insert "If an easement is terminated before the expiration of its stated term, the holder of the easement shall furnish a release of the easement suitable for recording to the record title owner of the real property subject to the easement."

Renumber accordingly

2001 TESTIMONY

HB 1276

Testimony-Joseph A. Satrom, Director of Land Protection Programs,
Great Plains Office of Ducks Unlimited, Inc.

HB 1276
January 26, 2001

Good morning Mr. Chairman and members of the House of Representatives Natural Resources Committee.

My name is Joe Satrom. I manage land protection programs for the Great Plains Regional Office of Ducks Unlimited here in Bismarck. The mission of Ducks Unlimited, which has its roots in the dust bowl days of the 1930s, is to fulfill the annual life cycle needs of North American waterfowl by protecting, enhancing, restoring and managing important wetlands and associated uplands.

I appear here today in opposition to House Bill 1276. Ducks Unlimited has a proud history of conservation work and of being highly supportive of the rights of private property owners including the right of landowners to place easements on their property. House Bill 1276 severely limits the right of property owners to work with private non-profit conservation organizations on either term or permanent easements on their land.

Easements are being used throughout the United States to protect the use of agricultural lands for agriculture. Farmers and ranchers are realizing important economic benefits by exercising their right to place easements on their property. House Bill 1276 would preclude North Dakota landowners from being able to consider and make their own decision with respect to these types of programs. I believe that North Dakota landowners have a right to make decisions regarding easements in the same manner that they exercise other rights related to land ownership.

I respectfully urge the Natural Resources Committee to recommend a do not pass on House Bill 1276.

January 26, 2001

Testimony before the House Natural Resources Committee

HB 1276

Chairman Rennerfeldt, ladies and gentlemen of the House Natural Resources Committee, my name is Keith Trego. I am the Executive Director of the North Dakota Wetlands Trust. I appear before you this morning to ask you to consider another point of view in contrast to HB 1276.

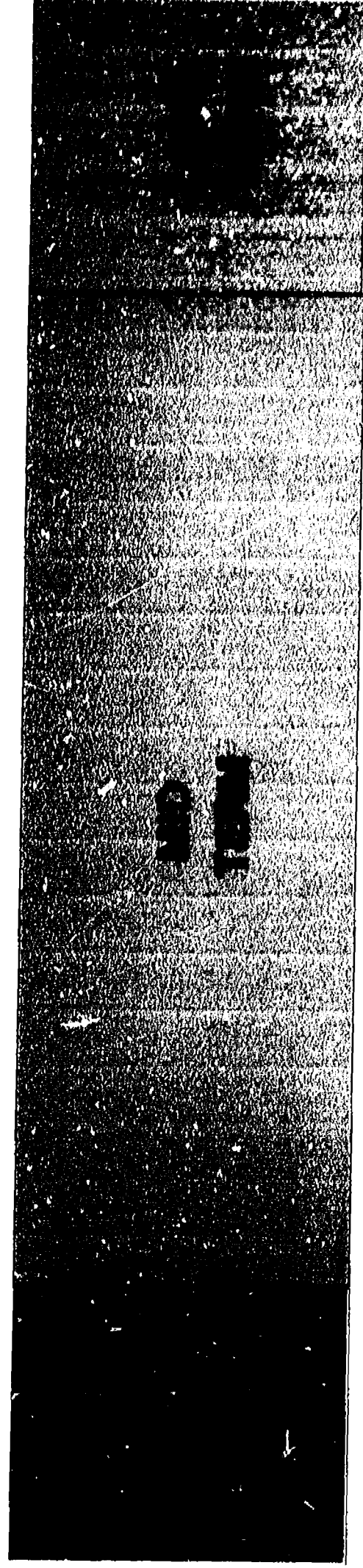
The North Dakota Wetlands Trust is a non profit organization created by Congress as part of the 1986 Garrison Diversion Reformulation Act. Our mission is to "preserve, restore, manage and enhance wetlands and associated wildlife habitat in North Dakota." We carry out our mission through a wide variety of private land conservation practices, but one of the tools we have available to carry out our mission is land protection easements. We currently have a pilot program underway involving mid term easements of 30 and 50 years. The pilot program offers a buy back provision and offers either annual or one time payment options. No contracts have been signed yet, but discussions are ongoing with several landowners. We promote private land conservation practices across a continuum of time frames. Short term programs work best in some situations, while mid or long term programs work better in others. Often, the best approach is a combination of programs of varying lengths. In all situations however, what works best is giving the landowner as many options as possible and letting them select the combination that works best for their land and their family.

All other motivations aside, the sale or donation of a land protection easement is a business decision. The balance between compensation available for property rights sold must be a "fair" deal for both parties. Until you approach the 30 year time frame, the administrative and realty costs involved in preparing an easement contract are generally prohibitive. Further, why would a landowner want to commit to an 10 year easement for a few dollars an acre on a one time basis when there are a variety of 10 and 15 year annual programs that provide that much or more on an annual basis.

Land protection easements are a poorly understood and controversial land management tool in North Dakota. While most states have laws, rules and regulations that enable and encourage land protection easements for preservation of agricultural and conservation values, North Dakota has taken an opposite approach. Our statutes contain restrictions and conditions that discourage, and in some cases actually prevent, a private property owner from availing themselves of the full array of land protection options available through use of easements. HB 1276 represent yet another suggestion that government is best suited to make land use decision for private property owners. I would suggest to you that flies in the face of our shared view of the sanctity of private property rights.

I respectfully ask the Committee to consider voting for maximum landowner options and to display faith in private property owner's ability to make their own land use and land protection decisions. I further request you consider a progressive, forward thinking approach to land protection and private property rights in North Dakota. A way to reinforce a more positive approach would be by voting against HB 1276.

LAND PROTECTION CONTINUUM



0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100 - PERPETUAL
YEARS

North Dakota Wetlands Trust

Mid-Term Conservation Easements



Trust's Mid-Term Conservation Easement Program

Conservation easements are the purchasing of the property rights to restrict the conversion of wetland and grassland habitat to cropland. The Trust has been given the opportunity by the governor of North Dakota to make 12 offers for conservation easements in North Dakota. The pilot program is based on sound biological data and will provide more landowner options when placing an easement on private property. The Trust's easement program offers shorter than perpetual terms (30 or 50 year terms), payment flexibility, a total and partial buyback provision, and greater flexibility on the easement property.

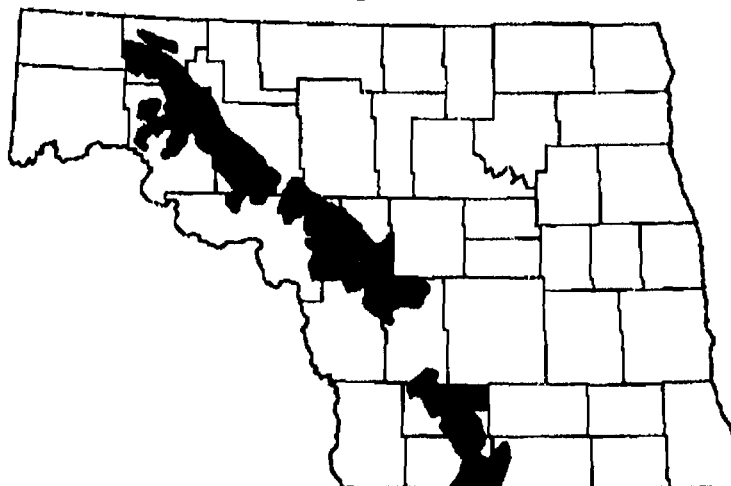
Mid-term conservation easements limit the conversion of wetlands and the surrounding grasslands to cropland. Water quality, wetland abundance, soil conservation, increased wildlife populations, and grassland agriculture will benefit. Because wetlands and grasslands require less agricultural chemical applications than cropland, easements will contribute toward a healthier ecosystem, while still maintaining lands in private ownership.

Easement Criteria

The easement criteria is based on biological data to protect wetland habitat in North Dakota. Goals of the program are to protect areas with abundant wetlands which are surrounded by existing native grassland. Guidelines for the Trust's Mid-Term Conservation Easement Program are listed below:

1. Property should be located within one of the three priority areas along the Missouri Coteau Region of North Dakota. (The map shows the three priority areas.)
2. Easements will be taken on tracts that are 160 acres or larger.
3. Vegetation must be unbroken native prairie or restored native vegetation.
4. Wetland habitat should range between 15% and 60% of the total acreage offered.

Mid-Term Conservation Easement Priority Areas



NORTH DAKOTA WETLANDS TRUST MID-TERM CONSERVATION EASEMENT

30 Years Lump Sum and Multi-Year Payment Option Buy Back Schedule

YEAR	PENALTY	EASEMENT VALUE	BUYBACK AMOUNT
1	\$9,000	\$30,000	\$39,000
2	\$9,000	\$30,000	\$39,000
3	\$9,000	\$30,000	\$39,000
4	\$9,000	\$30,000	\$39,000
5	\$9,000	\$30,000	\$39,000
6	\$9,000	\$30,000	\$39,000
7	\$8,100	\$30,000	\$38,100
8	\$7,200	\$30,000	\$37,200
9	\$6,300	\$30,000	\$36,300
10	\$5,400	\$30,000	\$35,400
11	\$4,500	\$30,000	\$34,500
12	\$3,600	\$30,000	\$33,600
13	\$2,700	\$30,000	\$32,700
14	\$1,800	\$30,000	\$31,800
15	\$ 900	\$30,000	\$30,900
16		\$30,000	\$30,000
17		\$28,000	\$28,000
18		\$26,000	\$26,000
19		\$24,000	\$24,000
20		\$22,000	\$22,000
21		\$20,000	\$20,000
22		\$18,000	\$18,000
23		\$16,000	\$16,000
24		\$14,000	\$14,000
25		\$12,000	\$12,000
26		\$10,000	\$10,000
27		\$ 8,000	\$ 8,000
28		\$ 6,000	\$ 6,000
29		\$ 4,000	\$ 4,000
30		\$ 2,000	\$ 2,000

NATIVE PASTURE/WETLAND COMPLEX IN COTEAU REGION OF NORTH DAKOTA

Fee Value = \$175/acre

Length of Easement	Relationship to Value of Perpetual Easement	Value per Acre Based on One-time Payment
Perpetual	---	\$55
99 years	---	\$55
50 years	1/2	\$28
30 years	1/3	\$18
20 years	1/5	\$11
10 years	1/10	\$ 6



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Bismarck, ND 58501-7107

KEITH TREGO
Executive Director

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ndwt@keith@bnet.com

TO: House Natural Resource Committee
FROM:
RE: HB 1276
DATE: January 26, 2001

Proposed amendment:

In the event any easement is terminated prior to the expiration of its stated term, the holder of the easement shall furnish to the then record title holder of the real property subject to the easement, a release of said easement suitable for recording.

Testimony on House Bill 1276 concerning Conservation Easements

Dennis Miller, President, LAND
9467 63 ST NE
Lawton, ND 58345
djmiller@polarcomm.com

Thank you for hearing testimony on Conservation Easements. LAND does not support the concept of Conservation Easements. We feel these easements put encumbrances upon ownership that can have unforeseen negative effects upon the profitability of ownership.

If conservation easements are placed on property, however, LAND feels a number of safeguards are necessary to safeguard the property owner's interests.

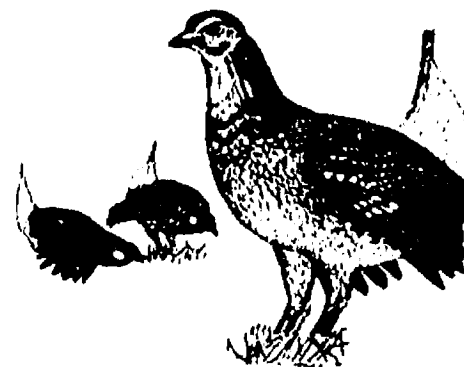
1. Easements should not exceed 10 years.
2. Easement renewal should be by mutual consent.
3. Easement payment should be annual and not lump sum.
4. Easements should contain a buyback provision.



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE
ON HB 1276, JANUARY 26, 2001**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I'm Bill Pfeifer speaking on behalf of the North Dakota Chapter of The Wildlife Society. The Wildlife Society opposes HB 1276.

The purchase of easements for conserving natural areas and habitats can be a very effective method of protecting these areas, providing they offer complete flexibility to the seller/landowner. HB 1276 does not offer any flexibility.

To be beneficial, the seller must have the option of selecting an easement duration that best suits that landowner's needs. The longer the easement duration, the greater the cash value to the seller. If, for example, a seller wishes to receive maximum dollar cash value, a perpetual easement may best serve his needs. Likewise, if the seller wishes to select a shorter duration, he should have that option without restriction from any state law.

In addition, the seller may simply desire to assure protection of the property for a duration longer than 10, 20, or 50 years and the associated funding may not be the determining factor. The seller should not be prevented from making that choice because of a state law.

Private property rights legislation was passed into law in North Dakota that was to protect the landowner from any governmental intrusion. HB 1276 does just the opposite by placing a duration restriction on the seller/landowner. Any duration restriction whatever is an infringement upon the private property rights of the landowner and does not permit the most desirable management.

HB 1276 serves as a detriment, not a benefit, to the landowner. Therefore, The Wildlife Society opposes HB 1276 and requests the committee give a DO NOT PASS.

**Testimony House Bill 1276, 50 Year Easements
Senate Natural Resources Committee 3/16/01**

Chairman Fischer, Vice Chairman Tollefson and the members of the Senate Natural Resources Committee, my name is Gerald Reichert, I am the North Dakota Field Representative for The Nature Conservancy.

I would like to thank you for allowing me the opportunity to offer this written testimony as part of our legislative process. The Nature Conservancy stands in opposition to HB 1276.

It is clear to us that this bill is anything but clear with respect to easements. On one hand, the term of easements will be cut from not longer than 99 years, to not longer than 50 years and will add a sellers buy back schedule. This change will take the absolute number of easements being done under the current law from none to zero. On the other hand this bill states that it restricts conservation easements, while under current statute there is no acknowledgement or provision for conservation easements. North Dakota is one of only two states that I am aware of that has not adopted some sort of universal easement law.

This bill does nothing to help facilitate conservation term easements, in fact will almost guarantee that none are ever done, which arguably could very well be the goal. This bill represents a disappointment to us in the non-profit conservation community since it appears to undermine the very real effort by the North Dakota Wetlands Trust to come up with a workable, yet flexible conservation term easement program under current law. This pilot program should be applauded by all sides rather than further restricted to the point where it will almost certainly fail, not on it's own, but by poorly conceived legislation.

Mr. Chairman and members of the committee after all that we have heard about easements, both pro and con, it is a topic that will be back again for all of our consideration. With that in mind I ask that you not further complicate and already complicated issue with this bill. Clarity in the easement law is not something that this bill provides.

I respectfully ask therefore that you the members of the Senate Natural Resource Committee give HB 1276 a Do Not Pass.

Gerald Reichert

TESTIMONY OF MALCOLM H. BROWN
SENATE NATURAL RESOURCES COMMITTEE
HB 1276
MARCH 16, 2001

Mr. Chairman and Members of the Committee:

I appear on behalf of the Real Property Section of the State Bar Association of North Dakota with regard to HB 1276.

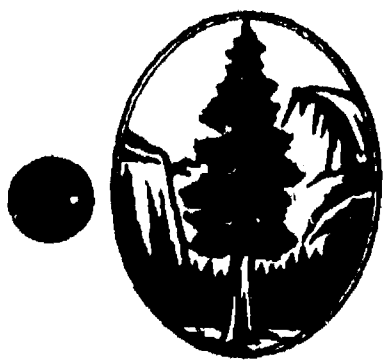
The State Bar Association is taking no position with regard to the amendments to § 47-05-02.1, NDCC, proposed by HB 1276. However, the Association believes that in view of the amendment in HB 1276, permitting a property owner to terminate certain easements, that language should be added to § 47-05-02.1, NDCC, relating to the termination of any easement before the expiration of its stated term. We suggest an additional section to § 47-05-02.1, NDCC, as follows:

In the event any easement is terminated prior to the expiration of its stated term, the holder of the easement shall furnish to the then record title holder of the real property subject to the easement, a release of said easement suitable for recording.

You should also consider whether the right to repurchase the easement should be given to the "individual granting an easement" or to the then record title owner of the real property subject to the easement.

Finally, you might consider changing the term "individual" to "person" as that term includes partnerships, co-ops, and corporations.

Thank you for your consideration.



**SIERRA
CLUB**
FOUNDED 1892

Dakota Chapter
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701-223-6179
Fax 255-0410
jonathan.bry@sierraclub.org

**TESTIMONY OF JONATHAN BRY
DAKOTA CHAPTER OF THE SIERRA CLUB
PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE
HB 1276**

Mr. Chairman and members of the committee:

I am Jonathan Bry speaking on behalf of the Dakota Chapter of the Sierra Club. The Sierra Club opposes House Bill 1276. This bill restricts the options of a landowner who wishes to sell easements for conservation purposes. The seller of an easement needs to have the option of deciding what duration best suits their needs. A 50 year limitation removes the incentive of the buyer and reduces the value of the easement for the seller. The longer the easement duration, the greater the cash value to the seller. This legislation will eliminate opportunities in North Dakota to protect wildlife habitat, farm and ranchland, and scenic lands with the use of easements.

Easements in other parts of the country are often perpetual. This has become a popular way for farmers to keep their land as farmland and to protect the natural qualities of an area while also keeping the land in private ownership. Many landowners have actually donated easements because of their desire to prevent unwanted development on their land. This may be land that was homesteaded by their great grandparents, and it may be land that they wish to remain as farmland, long after they are gone, preserving the legacy of their family.

It seems that there are many different perceptions of time. To some, 50 years may seem like a very long time. However, for organizations wishing to acquire easements, 50 years is a very short amount of time. Drastic changes can occur in one lifetime. For example, in just the last century, the vast majority of native prairie in North Dakota was altered. A 50 year easement would do little to protect native prairie. A perpetual conservation easement would give both the buyer and the seller confidence that the land would actually be protected.

We need to implement tools to conserve and protect wildlife habitat, rare and endangered species and plant and animal gene pools. Easements are those tools that can ensure that the needs of future generations are met, provided that there is not a 50 year limit on the duration of a legal agreement between a landowner and an organization.

I fear that we may wake up one day and realize that the option of conserving natural areas is no longer available. The lands that should have been protected may be altered to such an extent that they no longer offer the benefits that were available in the past.

Therefore, The Dakota Chapter of the Sierra Club opposes SB 1276 and asks the committee to give a **DO NOT PASS** recommendation to this bill.



Ohio's Promise To Farmers

BY DAN MILLER

During the early weeks of this new Ohio General Assembly, the bill writing for land preservation and re-zoning effort. If done right, it might do a lot to preserve farmland and the state's billion ag industry. The \$400 million Conservation and Revitalization Fund, Issue 1 on the November ballot, caps four years of hard work in which state officials, farmers and environmental groups, and citizens have combed a top-to-bottom review ways the state can better manage its land resources. Ohio is 26 million acres, half prime farmland. But also here are 16 urban areas. Ohio's innovative and ongoing efforts to protect farmland gained traction when former Gov. George Voinovich issued an order that all state agencies consider the impact of their policies on the state's farmland. Then the governor appointed a Farmland Preservation Task Force. From that work, completed in 1997, came a quiver of initiatives and programs. Among them: The Ohio Department of Agriculture opened an Office of Farmland Preservation. The state created a Family

Farm Loan Guarantee program for beginning and expanding farmers. • Two-thirds of Ohio's counties develop land-use plans. • The General Assembly approved an Agricultural Easement Purchase Fund. This is a purchase of development rights program in which local governments buy from willing farmers their land's development rights.

Earlier this year, current Gov. Bob Taft signed a \$200 million reduction in Ohio's estate tax. A provision in that new law gives special attention to the preservation of family farms.

Then came State Issue 1, an idea also forwarded by Taft.

Half of the \$400 million committed to the program will be used to clean up brownfield sites—old industrial sites. The brownfield program supports farmland preservation efforts by creating new land for urban development.

The other \$200 million works more directly for farmland preservation and open spaces.

About \$25 million will be spent on buying development rights.

Another \$100 million will be used to establish and protect green spaces, such as river cor-

ridors, forests and wetlands. The program will benefit farmland owners volunteering to be part of it.

About \$50 million is targeted to 44 major watersheds for voluntary cleanup programs, which farmers will be able to tap if they agree to help lighten their footprint on local watersheds.

Progressive Farmer, has written much over the years about conservation programs. The most popular have been those that are voluntary, that pay landowners a fair price for their preservation and conservation work, and fit well within the economic realities of farming communities.

Ohio legislators must ensure that the rights of its farmland owners are protected. Well-intended conservation programs sometimes have unintended consequences for farm owners.

For example, USDA's Conservation Reserve Program has in some locations made it difficult for cow/calf producers to find land to graze their cattle.

Another potential problem

arises when voluntary programs put undue pressures on farmland owners to participate.

Ohio's program is designed to address local needs. It is to be run by local agencies and citizens. But in its zeal to protect open spaces, green spaces and farms, the state must ensure that farmers who don't want to participate aren't in reality disadvantaged by overly expansive county land-use conservation programs.

After all, a voluntary program must ensure that a farmer has every right to sell his farm for development if he desires.



Ohio's \$400 million conservation program gives farmers new options to help protect their farms. PHOTO: JACOB LIND

just as it helps him keep on farming or preserve a fragile corner of the farm.

The challenges are now for the state's General Assembly to write rules for the program that fulfill the promise of a special conservation program.

MIDWEST EDITOR

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Testimony before the Senate Natural Resources Committee

HB 1276

✕ WETLANDS TRUST PILOT TERM EASEMENT PROGRAM

- ☛ Trust is **ONLY** entity considering term easements
- ☛ Alternative to perpetual easements
- ☛ Experimentation - in collaboration with agricultural groups - TO IMPROVE OPTIONS FOR PRIVATE LANDOWNERS

✕ HISTORY OF HB 1276

- ☛ Intended to be restrictive - no enabling legislation is necessary
- ☛ 10 yr. easement is unworkable - there are no buyers
- ☛ Amended to reflect Trust's 30 & 50 year pilot term easement program agreed to with governor's office
 - ▣ Buy back provision
 - ▣ Choice of payments - one time or annual
 - ▣ Worked with NDFB, NDFU and Stockmen to develop program
- ☛ 30 & 50 year easements are doubtful until proven

✕ HB 1276 IS REGRESSIVE AND BACKWARD THINKING

- ☛ Restricts experimentation and innovation
- ☛ Enables nothing

✕ IN CONCLUSION

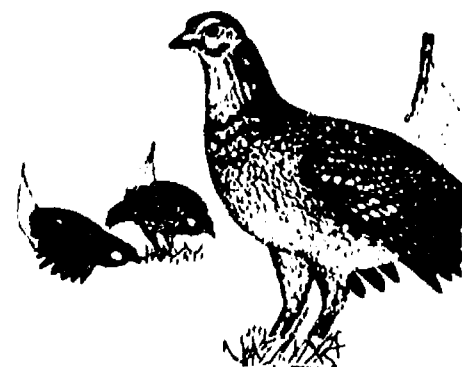
- ☛ The sale or donation of an easement **OF ANY LENGTH** is a private property right
- ☛ If you want to facilitate progress let the Trust, the NDFB and others experiment
- ☛ Let private landowners determine the most acceptable approach to land protection



North Dakota Chapter

THE WILDLIFE SOCIETY

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**TESTIMONY OF BILL PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE SENATE NATURAL RESOURCE COMMITTEE
ON HB 1276, March 16, 2001**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I'm Bill Pfeifer, representing the North Dakota Chapter of The Wildlife Society. The Wildlife Society opposes HB 1276.

This Bill is very restrictive, confusing, and contradictory. It takes away a landowner's private property rights. The 50-year limitation removes the very options it is intended to protect. It provides a buyback provision if a nonprofit conservation organization purchases the easement, however, there is no buyback provision if an agricultural organization buys it.

Recent legislation passed a "Takings" Bill that was to provide private property rights to landowners thereby preventing restrictions that would deny the landowner the greatest economic benefits. This Bill takes away the private property rights of the landowner.

Landowners want, and need, all of the land management and financial options which are available to keep the farm or ranch viable. Removing any of these options such as placing a 50-year restriction duration on easements is just another governmental intrusion on the landowner.

In order for an easement contract to take place, it requires a seller and a buyer. The landowner seller may prefer to deal with certain buyers and may also wish to have

certain conditions written into the contract, but that's only half of the story. The buyer will be investing cash into the purchase and contract conditions must be favorable or no purchase will occur. Buyers are going to be very reluctant to purchase short-term easements due to inefficient costs and the lack of long-term protection. So, who will be the buyers?

The agricultural groups will likely only serve as third party partners, not actually determining the contract. Nonprofit groups will have little interest due to long-term restrictions. Basically, this Bill will reduce any desire to purchase an easement, there again preventing any landowner's options.

Presently, the nonprofit Wetlands Trust organization has proposed, and received, permission from then Governor Schafer to conduct a pilot program offering 12 conservation easement opportunities of 30- and 50-year duration. In addition, Wetlands Trust offered a buyback proposal. This proposal, however, was only intended as a pilot program. HB 1276 is patterned after the Wetlands Trust proposal including the buyback option.

Passing this Bill at this time is wrong due to the unknowns. Will the landowners accept the low financial offers of such short-term easements? Are there any organizations willing to offer short-term contracts? Will the buyback plan work out? These questions need to be answered before an untested thought becomes law.

Several easement Bills were introduced this session and were killed, only SB 2388 has survived thus far. SB 2388 would allow agricultural organizations to take long-term easements with no specified restriction of duration. If HB 1276 passes, it will limit SB 2388 to a 50-year term duration thereby rendering SB 2388 useless.

HB 1276 will be meaningless and only be in the way of SB 2388. HB 1276 should be killed, the same as happened to several other easement Bills. Therefore, The Wildlife Society opposes HB 1276 and requests a DO NOT PASS on this Bill.