MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2319

2001 SENATE NATURAL RESOURCES

SB 2319

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2319

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-2-01

Tape Number	Side A	Side B	Meter #
1	X		38.5 - end
		X	Start - 41.6
2-9-01 1	X		12.1 - 21.2
Committee Clerk Signature			

Minutes:

SENATOR FISCHER opened the hearing on SB 2319, A BILL RELATING TO DURATION OF EASEMENTS.

SENATOR JEROME KELSH of District 26 cosponsor of SB 2319 testified that some of his constituents feel as landowners some of their property rights have been violated because restrictions and is not so sure the state has the right to govern landowners and who they can sell easements or land to.

JEFF NELSON, Director of Operations of the Great Plains Regional Office of Ducks Unlimited testified in support of SB 2319. (See attached testimony including map of Considered Grassland Easement Purchases).

SENATOR CHRISTMANN asked about the restrictions of the easements.

JEFF NELSON answered that the easements that are being purchased right now by the US Fish & Wildlife Department which the Ducks Unlimited are funding are limited to turnover of sod.

CONT

NEXT FICHE

Burning of the grasslands, haying after July 15th and the using of pesticides are allowed in close coordination with Fish & Wildlife.

SENATOR TRAYNOR asked what the role the US Fish & Wildlife played in the activity of the Ducks Unlimited involved with.

JEFF NELSON answered that the role played by the US Fish & Wildlife is one to purchase from willing sellers permanent grassland easements in conjunction with some of their wetlands easements only on native prairie. Ducks Unlimited role is to work with the landowner and also secure funding for the purchase.

SENATOR TIM MATHERN of District 11 cosponsor of the bill testified and suggested another concept to be added to the bill that the preferment easement would be available in the situation of flood litigation. He thought the option might strengthen the bill.

BILL PFEIFER speaking on behalf of the North Dakota Chapter of the Wildlife Society testified in support of SB 2319 (See attached testimony).

DAVID BORLAUS, President of the North Dakota Lewis & Clark Bicentennial Foundation and the President of the National Council Lewis & Clark Bicentennial testified in support of SB 2319. He added that we want a legacy for the future.

TRACY POTTER, of the Fort Lincoln State Park testified in support of the bill with the same reasons as earlier of SB 2266, to preserve the landscape of North Dakota.

SENATOR TRAYNOR: asked how the easement values were decided.

JEFFRY NELSON explained that easements are valued through certified appraisers, who value the property first with a full set of rights and then value the property absent the those rights that are going to be purchased the difference then becoming the inner market offer made to the land

owner. The percentage is running about 25% to 30% easement value is to the full value of the property.

SENATOR TOLLEFSON: asked about the effect the easements would have the taxable evaluation of the property.

JOE SATROM explained because that taxation is figured on productivity of the land and that these easements are being purchased on native grasslands only it would not effect the taxable value.

Written testimony was presented to the committee from MIKE DONAHUE, representing the North Dakota Wildlife Federation (See attached testimony).

There was no neutral testimony given on SB 2319.

ERIC AASUMDSTAD, president of the North Dakota Farm Bureau testified in opposition of SB 2319 (See attached testimony).

WES TOSSETT presented written testimony on behalf of Dennis Miller president of Land Owners Association of North Dakota (See attached testimony). He personally testified that maybe there should be a generational easement verses a perpetual easement.

ROGER BRANING, testified on his own behalf and felt the people of the right and left of the map he used would be cut off from each other.

SENATOR FISCHER closed the hearing on SB 2319.

FEBRUARY 9, 2001

SENATOR FISCHER reopened the discussion on SB 2319.

SENATOR TRAYNOR: suggested that SB 2388 that is scheduled for hearing next week would be a much better Bill than SB 2319 and it's sister bill, SB 2266. The SB 2388 would be more farmer friendly.

Discussion was held in regard to the testimony of farm organizations and their views of the bills.

SENATOR TRAYNOR made a motion for a "DO NOT PASS" of SB 2319.

SENATOR TOLLEFSON second the motion.

SENATOR FISCHER called for a roll vote. The vote indicated 6 YAYS, 1 NAY, 0 ABSENT OR NOT VOTING.

SENATOR TOLLEFSON will carry SB 2319.

Date: 2-9-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2319

Senate NATURAL RESOURCES Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Traynor Seconded By Tollefson

Senators	Yes	No	Senators	Yes	No
Sen. Thomas Fischer, Chairman	✓		Sen. Michael A. Every	✓	
Sen. Ben Tollefson, Vice Chair.	✓		Sen. Jerome Kelsh		✓
Sen. Randel Christmann	✓				
Sen. Layton Freborg	✓				
Sen. John T. Traynor	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Tollefson

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

REPORT OF STANDING COMMITTEE

SB 2319: Natural Resources Committee (Sen. Fischer, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2319 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2319

Senate Natural Resources Committee

Senate Bill 2319

Jeff Nelson, Director of Operations
Great Plains Regional Office - Ducks Unlimited, Inc.
Friday, February 2, 2001

Good Morning, Chairman Fisher and Members of the Senate Natural Resources Committee! My name is Jeff Nelson and I am Director of Operations for the Great Plains Office of Ducks Unlimited. Ducks Unlimited is an international conservation organization with our main office in Memphis, TN. Bismarck is home to one of four regional offices, the others being in Sacramento, CA, Jackson, MS, and Ann Arbor, MI. Our region encompasses eight states in the north-central part of our country. We have more than 8,600 members in North Dakota.

The mission of Ducks Unlimited is to fulfill the needs of North American waterfowl by protecting, enhancing, restoring and managing important wetlands and associated uplands up and down the flyways. We are unique in that our most critical work is with private landowners and in that a major part of our strength lies in our grassroots network of nearly 750,000 supporters, mostly from smaller cities and rural areas.

Ducks Unlimited has more than doubled its commitment to this part of the country over the past 5 years. More than 45 employees now reside here in Bismarck-Mandan and we've recently completed a new $3M office expansion. I am frequently asked why DU has made such a commitment to ND. The simple answer is that North Dakota is ground zero for duck production in North America. To work effectively, we needed to be part of the community. The organization funnels more than $12 million dollars annually through our office for work in our region.

Senate Bill 2319 seeks to authorize permanent easements on the Missouri Coteau. Today, the Fish and Wildlife Service, with funding from various sources, is acquiring permanent grassland easements on native prairie in this area, on a voluntary basis, from willing sellers. Current state law makes this the only permanent easement option for ranchers. Should this bill pass, options for ranchers to partner in conservation with others, seeking to pay for permanent ranchland protection, would become available.

North Dakota has a great deal to offer waterfowl. Ducks are attracted to water and their nesting success, we now know from research, depends on the amount of grassland cover. Research and better technology now help us design and deliver appropriate conservation programs for key areas in the state. Science tells us that there is no place more critical to us than the Missouri Coteau. This rocky, hilly terrain is the "best-of the-best" landscape for ducks on the North American continent.

Fortunately, most of this land is owned by ranchers, people valuing the same characteristics as we do; grass and water. Recognizing a win-win, "Grasslands for Tomorrow", a $120 million DU conservation initiative, was developed to protect the

grassland and wetland habitat of the Missouri Coteau in the Dakotas by working with those living on the land. Conservation easements are an ideal means by which to protect these lands because ranchers sell only rights not needed for their cattle operations, thereby realizing cash flow for a variety of related purposes. Permanent easements mean that the land will remain in private ownership, continue to be used for animal based agriculture, and be maintained on the local property tax roles. This is a real win-win approach.

When a grassland easement is sold, two rights are being bought from landowners: (1) the right to cultivate grasslands, and (2) the right to cut hay before July 15th. All other rights remain with the owner. Pastureland is protected for future generations, soil erosion is prevented, and families remain on the land. Moreover, a permanent partnership is established between fellow conservationists, the ranchers and us. Hundreds have lined up already for this program.

I am sure that you, as legislators, are probably most interested in why we think a major conservation initiative involving permanent conservation easements is good public policy. I believe maintaining critical natural and agricultural assets are important elements in the economic development of North Dakota. Grassland is as important to a diversified agricultural economy as productive cropland or value-added processing. The Missouri Coteau is probably the best cattle and grass based agricultural area of North Dakota. Relatively good precipitation, the rolling topography and abundant wetlands of this unique region combine to form a critical part of the State's cattle industry. While prices for many crops remain stagnant, requiring billions in support recently, the cattle industry remains largely self-reliant, showing steady improvements in profitability over time. Neither DU nor the cattlemen want to lose the basis for this economic asset, and neither should policy-makers. Once the native grassland is broken, it's gone forever. Restoration is never complete and is usually cost-prohibitive.

Grassland easements provide a 25-30% return to landowners. Hundreds of ranchers are finding this program valuable and flexible. It has helped them expand their herds, reduce their debt, educate their children, and plan a more secure retirement. At the same time, some ranchers are telling us that they are selling grassland easements because they feel strongly that their grasslands "should never be broken" or "easements will help our family protect our ranching lifestyle". Opinions solidify when they see a neighbor's pasture go from native rangeland to cropland, to blowing dirt and sparse crops, and then into weedy CRP or monotypic brome fields. Most make the decision to sell an easement only after long consideration, usually in consultation with their children.

When land under easement sells for the same price as pasture that could be broken, easements begin to be viewed as an opportunity by those in the cattle business. New or expanding ranchers have used easement payments to secure financing from lenders, who've also begun to note the lack of impact on value.

We believe that the broad-based landowner interest in grassland easements is understandable from a number of other perspectives:

- Farmers and ranchers are concerned about their rural communities and grassland-based agriculture is good for local communities since ranchers live and work on their ranches throughout the entire year,
- Ranchers recognize the right to sell their property, whether easements or in fee, whether for 99 years or in perpetuity,
- Landowners are beginning to see the impact of maintaining their property in native prairie for other economic reasons. Eco-tourism is beginning to take root and they understand that their property is the basis for the tremendous game populations enjoyed by hunters each fall.
- Most take pride in their ability to make a living without destroying the resource that has supported their families, often since their ancestors homesteaded the area. They'd like future generations to do the same. Many also simply enjoy the natural amenities of native prairie themselves, whether diverse wildlife, prairie flowers, or the quiet and open space.

We believe SB 2319 offers our State and agricultural producers on the Missouri Coteau another choice that may be important to them economically or for other reasons. Passage would help keep the last stronghold of grass-based agriculture east of the Missouri River intact while maintaining ownership and management in the private sector. At the same time, critical natural resources could be safe guarded for future generations of ranchers, hunters, and other conservationists who count these areas as one of the great things about our state. We respectfully ask your support of this important legislation. I would be happy to answer questions concerning my testimony.

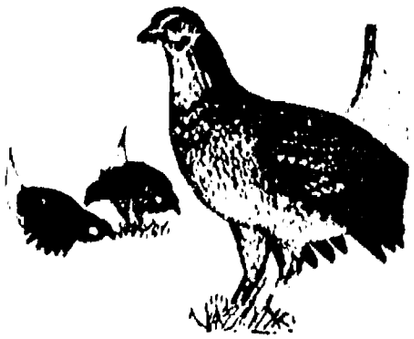
Senate Bill 2319

The prairies of North Dakota define the character of our State and provide a foundation for our ranchers, wildlife, and rural communities. But North Dakota's grasslands are fast disappearing, and with that loss we are losing a key part of our State's heritage and habitat critical to waterfowl and a myriad of other wildlife species. Ducks Unlimited seeks to purchase grassland conservation easements from willing landowners to protect native prairie from cultivation. Through conservation easements, DU can ensure the multiple-uses our grasslands provide are sustained through the 21st-Century and beyond.

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 SENATE NATURAL RESOURCE COMMITTEE
ON SB 2319, February 2, 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 supports SB 2319 because removal of the ninety-nine-year easement restriction opens another door and provides another option to landowners wishing to preserve and protect their property.

The Missouri Coteau region is quite unique in that its rough, rolling landscape that contains wetlands as left by the last ice age, is the greatest waterfowl producing area remaining in the continental United States. This unique area is not duplicated elsewhere.

Retaining these highly productive waterfowl areas is not the responsibility of the landowners but is highly desirable from the conservation standpoint. An easement can provide that tool whereby the conservation community can provide a financial reward to the landowner in helping to keep the family farm a viable agricultural operation. It's a win/win situation.

Easements do not have to involve a conservation concern. Easements taken by agricultural organizations produce the same effect. The idea is to protect the land.

The question often arises as to why remove the ninety-nine-year easement and replace it with a shorter term or longer perpetual easement. The answer is that in order to sell an easement, there has to be a buyer and few buyers are willing to invest in an easement that does not guarantee protection of the investment. The perpetual easement

provides the greatest financial return to the landowner and the greatest assurance that the landowner's wishes will be as he directs, not as someone else wishes.

From the standpoint of the next generation's desire to manage these lands differently than the present landowner wishes, the present landowner options may be to sell an easement on the property and retain the land in production, or to sell the land to a neighbor wishing to increase his operation thereby not leaving the land to the next generation. In this scenario, the easement can be a very attractive package.

Therefore, The Wildlife Society supports SB 2319 and asks the committee to give a favorable DO PASS vote to this Bill.

February 2, 2001

For: North Dakota Senate Natural Resources Committee

Reference: SB 2266 and SB 2319

The North Dakota Wildlife Federation, Inc. supports SB 2266 and SB 2319 and asks for a do pass for each bill

The Federation believes that a landowner should have the right to enter in to a perpetual easement if he or she so desires.

Within the areas designated in the bills, not all landowners will enter in to an easement. But, for those that do, normally they will gain a substantial tax advantage.

All in all, we believe that agriculture, conservation, development, and aesthetics will gain from this change.

Mike Donahue
Lobbyist #258

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North Dakota Farm Bureau www.ndfb.org

Testimony of North Dakota Farm Bureau

Senate Bill 2319

Presented by Eric Aasmundstad

Chairman Fischer, Members of the Senate Natural Resources Committee. My name is Eric Aasmundstad, I am a farmer from the Devils Lake area and the President of North Dakota Farm Bureau. I am here today representing myself, and the 26,000 member families of North Dakota Farm Bureau.

I am here today in opposition to Senate Bill 2319. North Dakota Farm Bureau realizes that the ability to sell an easement is a property right. However, we are opposed to perpetual easements. We believe placing restrictions on property, in the best interest of this generation, is possibly short sighted and presumptuous. There is much talk about the ninety-nine year limit on easements, being an undo encumbrance. I would disagree with this statement. Future generations will have to deal with any restrictions now placed upon them with a perpetual easement. This is a greater encumbrance than not having access to perpetual easements. Many other options exist to allow for the preservation and conservation of private property. What right do we have to stand here today, and dictate how future generations will utilize this land? How can we ignore the fact that the future needs of society, may differ greatly from what we face today?

We also realize that perpetual easements are a fact of life. Currently perpetual easements can be taken in North Dakota. They can only be held by the U.S. Fish and Wildlife Service. This is unacceptable to our membership and should be changed. There is legislation pending hearing in the Senate, we believe will better address the question of perpetual easements. Legislation that we believe will better serve property owners as well as the conservation community.

Senator Thomas Fischer, Chairman
Senate Natural Resource Committee
North Dakota Senate
Bismarck, ND

Chairman Fischer,

Thank you for taking testimony on SB 2319 concerning duration of easements. I submit this for the Landowners Association of North Dakota.

Land opposes the new wording: EXCEPT FOR PROPERTY LOCATED IN THE MISSOURI COTEAU REGION OF THE STATE included in SB 2319. If SB 2319 were allowed to become law, perpetual easements would be allowed on much of the private property in western North Dakota. LAND does not support perpetual easements except for utilities and public services.

Perpetual easements deprive current and future generations from reaping benefits of new technology, social, political, economic or cultural changes. Morally, LAND feels it is wrong to tie the hands of future landowners by perpetual easements.

LAND is also concerned with the two bills similar to SB 2319. SB 2266 and HB 1438, along with SB 2319, allow for perpetual easements on much of the land in western North Dakota. Should these bills become law, a majority of the land in this area could have perpetual easements attached. I ask you Chairman Fischer and the rest of the Senate Natural Resource Committee, is this the legacy you want to leave to the children of North Dakota?

Landowners from NE North Dakota have experience with perpetual easements and have grim stories to tell. I can name three landowners within 15 miles of my home who have had negative experiences because of armed agents wanting to enforce conditions of easements. Is this the legacy we want to leave our children?

Almost to a person, landowners with perpetual easements attached to their property would say the easements have been a detriment to the profitability of the land. In hindsight, the up-front money received for the easement has been a pittance compared to the financial burden compliance to the easement has caused.

Land asks you to give SB 2319 a do not pass recommendation.

Thank you

Dennis Miller, President
Land Owners Association of North Dakota
9467 83 St NE
Lawton, ND 58345

2/1/01

NORTH DAKOTA
WETLANDS TRUST

Keith Trego
Executive Director
P.O. Box 3175
Bismarck, ND 58502-3175
(701) 223-8501
Fax: (701) 223-6937

March 9, 2000

Mr. Barry O. Hasti
State Supervisor of Assessments
ND Tax Department
600 E. Boulevard
Bismarck, North Dakota 58505-0599

COPY

Dear Mr. Hasti:

The North Dakota Wetlands Trust is implementing a pilot program of term easements (30 years) that will offer protection for wetlands, grasslands and agricultural values of land. Other current programs are also available that provide North Dakota landowners the opportunity to protect those same values through long-term conservation easements. As you know, property taxes have increased in recent years and have become an ever increasing proportion of the operating revenue of local political subdivisions. Thus, one of the obvious questions posed to me when I explain conservation easements is the potential impact of property taxes on agricultural land where conservation easements have been donated or sold.

Your answer to the following two questions would be helpful in explaining conservation easements to groups and individuals in North Dakota:

1. If a landowner sells or donates a conservation easement and surface use remains as agriculture, as would be the case under nearly all typical conservation easements, would a county lower the property taxes?
2. Is there any statute which provides an opportunity for a landowner to petition a county to lower property taxes as the result of the sale or donation of a subset of property rights through a conservation easement?

Your help in clarifying these very important facts is much appreciated.

Best regards,

Keith

Keith Trego
Executive Director

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 58505-0599
701-328-2770 FAX 701-328-3700 Hearing/Speech Impaired 800-366-6888 (TTY Relay North Dakota)
HTTP://WWW.STATE.ND.US/TAXDPT

CLAYBURGH
MISSIONER

March 13, 2000

Keith Trego
Executive Director
North Dakota Wetlands Trust
P.O. Box 3175
Bismarck, ND 58502-3175

Dear Mr. Trego:

This is in response to your letter dated March 9, 2000 in which you describe a program of pilot program of term (30 years) easements that will protect wetlands, grasslands and agricultural values of land. Current programs offer the same protection through long-term conservation easements. You then ask the following questions about the property tax status of these conservation easements:

1. If a landowner sells or donates a conservation easement and surface use remains as agriculture, as would be the case under nearly all typical conservation easements, would a county lower the property taxes?

I do not believe the valuation of the agricultural land under a term easement would be reduced because of the easement. The reasoning for this belief follows:

The definition of agricultural land is found in North Dakota Century Code § 57-02-01(1) quoted, in relevant part:

> **57-02-01. Definitions.** As used in this title, unless the context or subject matter otherwise requires:
>
> 1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals ...

The valuation of agricultural land is set out in N.D.C.C. § 57-02-27.2, which states, in relevant part:

> **57-02-27.2. Valuation and assessment of agricultural lands.**
>
> 1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. ...

The statute prescribes a formula based upon agricultural production of the land as the basis for valuation of agricultural property for property tax purposes. Qualifying inundated land is valued at ten percent of the formula derived noncropland value. There are no provisions for reflecting the existence of easements or other property rights that might be severed from the surface ability to produce crops or graze livestock.

A plain reading of the statutes leads to the conclusion that the method provided by N.D.C.C. § 57-02-27.2 is the only method for valuation and assessment of agricultural land.

Your second question asks:

> 2. Is there any statute which provides an opportunity for a landowner to petition a county to lower property taxes as the result of the sale or donation of a subset of property rights through a conservation easement?

A landowner may have land removed from the tax rolls if it meets the criteria of N.D.C.C § 57-02-10, quoted as follows:

> **57-02-10. Inundated and highway easement lands exempt from taxation.** The board of county commissioners is authorized and directed to remove from the tax rolls and to declare as exempt from taxation all inundated lands upon which the owner thereof has granted or hereafter shall grant a permanent easement to the United States of America, its instrumentalities, or agencies, for the purpose of constructing, maintaining, and operating water or wildlife conservation projects, and all lands upon which the owner thereof has granted or hereafter shall grant an easement for a highway or road right of way to the United States, its instrumentalities or agencies, or to the state or its political subdivisions, and such lands so removed from the tax rolls shall remain exempt until such time as such water or wildlife conservation projects or highway shall have been abandoned. Such lands shall not be removed from the tax rolls and declared exempt from taxation until such time as the construction of such water or wildlife conservation projects or highway thereon shall have been completed. (Underlining added for emphasis.)

I trust that this information is helpful to you. If you have any questions or want additional information, please contact me at (701) 328-3128, or toll-free in North Dakota 1-800-638-2901, option 5.

Sincerely,

Barry Hasti
State Supervisor of Assessments

TESTIMONY OF MALCOLM H. BROWN
SENATE NATURAL RESOURCES COMMITTEE
SB 2266 and SB 2319
FEBRUARY 2, 2001

Mr. Chairman and Members of the Committee:

I appear on behalf of the Real Property Section of the North Dakota State Bar Association. While we neither support nor oppose SB 2266 or SB 2319, we believe certain information should be considered by the Committee in its deliberations on these bills.

First of all, there are many types of easements. There are easements for waterfowl purposes, there are easements for drainage purposes, there are easements for conservation purposes, etc. There are also easements for electric transmission lines, for gas, oil, and other commodity pipelines. There are easements for cell phone towers, and there are easements for restricting the use of land for aviation purposes near airports. All of these types of easements would be affected by the amendments proposed by SB 2266 and SB 2319.

For instance, if these bills were law, a pipeline to cross North Dakota could have a perpetual term where it crossed the Missouri River and the Missouri Coteau, but would have only a 99-year term where it went through eastern North Dakota. A cell phone tower could have a perpetual existence in the Missouri Coteau, but in Cass County would be limited to 99 years.

Thus, the first issue that may be considered with regard to these bills is whether easements should have a statutory limit on their term, or whether easements should be allowed to be perpetual based on the agreements between the parties to the easements.