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10/21/03

2003 SENATE NATURAL RESOURCES

SB 2283

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2283

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-7-03

Tape Number	Side A	Side B	Meter #
1	X		32.9 - end
		X	.0 - end
2	X		0.0 - 6.7
Committee Clerk Signature <i>Janet James</i>			

Minutes:

Senator Ben Tollefson, Vice Chairman of the Senate Natural Resources Committee opened the hearing on SB 2283 relating to duration of conservation easements.

All the member of the committee were present.

Senator Tim Mathern of District 11 cosponsor of SB 2283 introduced the bill (See attached testimony).

Rosemarie Myrdal (47.1) former Lieutenant Governor testified in support of SB 2283 (See attached testimony).

Bill Price of Price, North Dakota testified in support of SB 2283 stating he wants to protect land from development. By doing an easement he still has his land in agriculture and has this supplemental income. He feels it is his right as a landowner to have these easements.

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Senate Natural Resources Committee
Bill/Resolution Number SB 2283
Hearing Date 2-7-03

Pat Wachter a third generation landowner north of Bismarck testified in support of SB 2283. He has developed land but and stated that an easement is another tool or option as to what can be done with the land.

Andy Mork (5.8) of rural Mandan testified in support of SB 2283 (See attached testimony).

Lance Yohe (13.8) Executive Director of the Red Rive Basin Commission testified in support of SB 2283 (See attached testimony).

David Borlaug, President of the North Dakota Lewis & Clark Bicentennial Foundation testified in support of SB 2283 (See attached testimony). He also stated that the thing that has been overlooked in this testimony is that a private landowner who wants to protect his land may grant that it as a charitable donation whoever the IRS will only allow that for a tax deduction unless it is a perpetual easement and this is the issue that they as a charitable organization has.

Bruce Blair (18.2) a Mandan landowner testified in support of SB 2283. He described the land that he owns in a family partnership. He talked about the economics of the is land and have three options :

1. Break up the land and use for agriculture
2. Divide it into tracks and sell it off
3. Enter in some kind of conservation easement to preserve the land in its present use.

The problem with this third options has a huge problem in North Dakota. Unlimited easements is what we need and would be provided by this bill.

Senator Tollefson asked for testimony in opposition to SB 2283.

Wade Mosser (21.6) of the North Dakota Stockman's Association testified in opposition to SB 2283 He submitted a newspaper article (attached). He talked about the tax consequences and the

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Senate Natural Resources Committee
Bill/Resolution Number SB 2283
Hearing Date 2-7-03

Bush tax law is on the right track. Another problem is with the IRS. Maybe some of these easements should be written up for agriculture and not just conservation.

Senator Tollefson asked if the state's Washington delegation has been of any help.

Wade Mosser respond the they have not been of any help to look into the IRS rules to allow rancher and producers who want to put short term easement for a tax break.

Chuck Damchem (30.8) past president of the Landowners Association of North Dakota (LAND) testified in opposition of SB 2283. He stated there seems to be a lot of knowledge in the room as to the future and he feels this is beyond human ability. He stated a conservation easement is restrictive with no benefit to the grantor except there might be a tax advantage. Once the easement is granted the landowner has not recourse in the event of a dispute with the easement holder. He submitted a position statement by LAND (attached) and the pamphlet on the "Myths About Conservation Easement" (attached).

Paul Fevereisen, (45.9) President of the Missouri River Adjacent Landowners Association (MRALA) testified in opposition to SB 2283. (See attached testimony). He also submitted a handout to the committee (attached).

Dennis Miller (48.9) past president of the LAND testified in opposition of SB 2283 (See attached testimony). He read a quote from the North Dakota Parks & Recreation Department article which explains why they oppose a third party easement.

Neil Effertz (Tape 2, Side A 0.0) a Missouri landowner testified in opposition to SB 2283. He stated his opposed to the bill for several reasons. He stated this bill would sever the value from the land and places a larger burden on the future owner of the land. He also thinks adjacent

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Senate Natural Resources Committee
Bill/Resolution Number SB 2283
Hearing Date 2-7-03

landowners would be in jeopardy for their continually agricultural interests if these conservation easements are applied especially with the third party enforcement issues this bill contains.

Brain Kramer (2.5) of the North Dakota Farm Bureau testified in opposition of SB 2283. Two years ago this issue was addressed and the bureau stands the same.

Gordon Bischoff testified in opposition to SB 2283. The economic impact on himself and his area is very large. This peptual easement has been a disaster for him and his.

Wes Towset a retired farmer testified in opposition to SB 2283. He stated he is now turning his farm over to his son easement free and is confident his son will continue to keep this land productive. He stated these third party endorsements can be one of many and come in and enforce their values.

Senator Tollefson closed the hearing on SB 2283.

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10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2283

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-12-03 Discussion and Action

Tape Number	Side A	Side B	Meter #
1		X	10.6 - 12.0
Committee Clerk Signature <i>Jane Jane</i>			

Minutes:

Senator Ben Tollefson, Vice Chairman of the Senate Natural Resources Committee opened the discussion on SB 2283.

All members of the committee were present except Senator John Traynor and Senator Layton Freborg.

Senator Stanley Lyson has received many messages about this bill.

Senator Lyson made a motion for a Do Not Pass of SB 2283.

Senator Michael Every second the motion.

Roll call vote was taken indicating 5 YEAS, 0 NAYS AND 2 ABSENT OR NOT VOTING.

Senator Lyson will carry SB 2283.

Senator Tollefson closed the discussion on SB 2283.

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10/21/03
Date

Date:
Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2283

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Lyson Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg					
Senator Stanley W. Lyson	✓				
Senator John T. Traynor					

Total (Yes) 5 No 0

Absent 2

Floor Assignment Lyson

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

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10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 4:42 p.m.

Module No: SR-27-2503
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2283: Natural Resources Committee (Sen. Fischer, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2283 was placed on the Eleventh order on the calendar.

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2003 TESTIMONY

SB 2283

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Deanna D. Smith
Operator's Signature

10/21/03
Date

Senate Natural Resource Committee, February 7, 2003

Chairman Fischer and Members of the Senate Natural Resources Committee.

My name is Tim Mathern, I am the Senator from District 11 in Fargo. I am a sponsor of Senate Bill 2283. This bill is important legislation to long-term efforts to develop a cost effective response to devastating floods such as those that impacted the Red River Valley during much of the 1990s. This legislation offers the potential to utilize a new approach by allowing for permanent flood easements as a mitigation tool in dealing with these incredibly difficult flood problems. In addition, this legislation offers the people of the Missouri River Valley the opportunity to permanently protect some of the State's most significant agricultural, open space, cultural, wildlife and scenic areas.

SB 2283 is legislation to adopt the Uniform Conservation Easements Act and to amend and reenact existing law in subsection 2 of section 47-05-02.1. The Uniform Conservation Easements Act was developed by the National Conference of Commissioners on Uniform State Laws. Nearly half of the states have adopted the uniform act and the remaining states except North Dakota have adopted some variation of this legislation authorizing perpetual easements.

Section 1 of SB 2283 amends and reenacts existing law. The amendments permit landowners in the counties along the Red River and the Missouri River in North Dakota to protect the land with perpetual easements.

The remaining sections are essentially the Uniform Conservation Easements Act taken directly from the National Conference of Commissioners on Uniform State Laws.

Section 2, number 1 is the definitions section. This section defines the terms "conservation easement", "holder" and "third party right of enforcement". This section enables durable restrictions and affirmative obligations to be attached to real property to protect natural and historic resources. Conservation easements can be held by governmental bodies, charitable corporations, charitable associations and charitable trusts. These definitions are directly related to Section 170 of the Internal Revenue Code. Gifts of conservation easements may be eligible for tax benefits under existing IRS guidelines and regulations.

Section 3, number 1 provides that except for provisions contained in this proposed act, a conservation easement shall be treated as other easements within existing law.

Number 2 provides that there are no responsibilities for the holder or a third party charged with enforcement of the easement until the easement is signed and recorded.

Number 3 provides that conservation easements in the counties along the Red River and the Missouri River are perpetual unless otherwise provided.

Number 4 provides that if a tenant or third party has an interest in the property being placed under conservation easement that third party cannot be harmed and that this third party or

Deanna Waller
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12/21/03
Date

tenant has to consent to the easement in order for it to be placed on the property.

Section 4, number 1, a through d, deals with who can bring a judicial action related to a conservation easement.

Number 2 clarifies that a court can modify or terminate a conservation easement entered into under the provisions of this act.

Section 5, numbers 1 through 7, deals with the validity of a conservation easement established in defined circumstances; a conservation easement is valid even if it is not an appurtenant interest to the property, even if the easement can be and is assigned to another holder, even though it has not been recognized as common law, even if it imposes a negative burden, even though it imposes affirmative obligations upon the owner of an interest in the property or upon the holder of the easement, even though the benefit does not touch or concern real property, and even though there are no privities of estate or of contract.

Section 6 of the bill deals with the applicability of the Act by pointing out that this legislation only applies to conservation easements established after the effective date of this Act. This section further provides that these conservation easements must not contravene the Constitution or laws of North Dakota or the United States and lastly, that conservation easements cannot and do not invalidate any existing, legally established interest in the land in question.

In conclusion, I make four final points.

-This is important legislation to all of North Dakota. We have limited the rights of our landowners to protect their property with perpetual easements. By providing landowners along the Red River and Missouri River the right to donate or sell conservation easements we are beginning the process of correcting this.

-This hearing may bring out people who claim to be advocates of property rights while they oppose allowing other landowners to sell or donate conservation easements. We need to ask for ideological integrity, this bill provides the framework so that landowners can voluntarily make a decision to place their land under conservation easements.

-I saw the floods of the Red River Valley, I was also fortunate to take a trip to Europe to see what the citizens of the Netherlands have done to protect themselves from water with green ways and conservation space while also building their economic base. We can do the same here and prevent much heart ache and disaster expense at the same time.

-Stewardship of our land is good for us now and for future generations, easements are an integral part of our stewardship of the resources available to us.

I ask for your Do Pass recommendation for SB 2283. Thank you for your attention and consideration.

seize (see *ghend*)

sp. understand. These
reception. *Approach*
not imply full under-
of full understanding.
Understand, nearer
sympathy, compa-
land me.

Capable of being ap-
tly adv.
earful or uneasy ap-
or capturing, *ap-
and; understanding
lish apprehensive
ndere* (past participle)

sentiment, *misgiv-
g that impends
of the future. *Ap-
ed irrationally
a less certain
y unpleasant
al, applies to a
mistrust,
ous or fearful
nding; quick to
prehensively**

One bound by
c amount of time
ness. 2. Any
To place of
[Middle English
o learn, from Latin
ship. *Ap-
ted closely
stin apprehensive
+ *pretere* to pass*

Also *ap-prox-*
d with *of*. [From
to cause to leave
n from Latin
ening, *pro-*
me, or magnitude
use to come close
condition, or other
ce a proposal
or work on. *Ap-
fairly close
years of reaching
e method used in
Often plural. An
another. 6. Golf,
e with which the
green. 7. Plural
for the protection
idle English *ap-
Latin appropriate
m *prope*, near (see**

ible of being ap-
approached; recep-
ly *n*.
-bates. To sanc-
from Latin *ap-
-atory* (*a-prō-bo-*
commendation.
rd.
of being appro-
a particular per-
tine. See *Syn-*

Often used with *of*. [Middle English *approven*, from Old
French *aprover*, from Latin *approbare*, to make good, admit as
good; *ad-*, to + *probus*, good (see *per* in Appendix*).] *—ap-
provable* adj. *—ap-prov'ing-ly* adv.

Synonyms: *approve*, *endorse*, *sanction*, *certify*, *accredit*, *ratify*.
These verbs mean to express a favorable opinion of a person,
thing, or action, or to signify satisfaction or acceptance. *Ap-
prove* the most widely applicable, may indicate varying degrees
of admiration. *Endorse* (or *indorse*), stronger than *approve*, im-
plies expression of support, often by public statement. *Sanction*
adds authorization; usually official, to approval. *Certify* and
accredit imply official endorsement gained upon conforming to
set standards. *Ratify* refers to making legal by formal official
approval. *A treaty ratified by the legislatures of each of the coun-*

tries involved.
Approved school, British. A reform school.
Approved, approximate; approximately.

Approximate (*a-prōk's-mīt*) adj. *Abbr.* *approx.* 1. Almost
correct, complete, or perfect. 2. Very similar; closely re-
sembling. 3. Close together; near. *—v.* (*a-prōk's-mīt'*) *ap-
proximate*, *making* *mates*. *—tr.* 1. To come close to; be
nearly the same as. 2. To cause to approach; bring near.
3. To come near or close in degree, nature, quality, or
characteristics. [Late Latin *approximatus*, past participle
of *approximare*, to come near to; Latin *ad-*, to + *proximare*, to
come near, from *proximus*, nearest (see *per* in Appendix*).]

Approximately (*a-prōk's-mā-shən*) n. 1. The act, process,
or result of approximating. 2. Mathematics. An inexact result
adequate for a given purpose. *—ap-prox'i-mā-tive* (*-mā'tiv*) adj.
—ap-prox'i-mā-tive-ly adv.

Appoint, appointed.
Appointment (*a-pū't'n-əns*) n. 1. Something added to
another, more important thing; an appendage; accessory.
2. Any equipment, such as clothing, tools, or instru-
ment, used for a specific purpose or task; gear. 3. Law. A
right, privilege, or minor property that is considered incident to
the principal property for purposes such as passage of title,
conveyance, or inheritance. —See *Synonyms* at *appendage*.

Appurtenance, *appurtenance*, from Norman
French *apurtenance*, variant of Old French *apertenance*, from
Vulgar Latin *appertinentia* (unattested), from Late Latin *ap-
pertinere*, *APPERTAIN*.]

Appurtenant (*a-pū't'n-ənt*) adj. 1. Law. Constituting an ap-
purtenance. 2. Belonging, accessory, or incident to.

Apraxia (*a-prāk's-ē-ə*) n. The inability to perform coordinated
movements as a result of lesions in the cerebral cortex. [New
Latin from Greek, *inaction* + *a-*, without + Greek *praxis*, ac-
tion, from *prassein*, to do (see *prak-* in Appendix*).] *—a-prax-*
ic (*prāk'tik*) adj.

Apricot (*ā-prī-kōt'*, *ā-prī-*) n. 1. A tree, *Prunus armeniaca*,
native to western Asia and Africa, widely cultivated for its
edible fruit. 2. The juicy, yellow-orange peachlike fruit of this
tree. 3. Moderate, light, or strong orange to strong-orange yel-
low. See *color*. [Earlier *abreck*, possibly from obsolete
Catalan *abercoc*, from Arabic *al-birquq*, "the apricot," from
Late Greek *praikokion*, from Latin (*prunum*) *praecoquum*,
"early-ripening (plum)," from *praecoquere*, to ripen early;
prae-, before + *coquere*, to ripen, cook (see *pek-* in Appen-
dix*).]

April (*ā-prōl*) n. *Abbr.* *Apr.* The fourth month of the year ac-
cording to the Gregorian calendar. April has 30 days. See *calen-*
dar. [Middle English, from Latin *aprīlis*, perhaps "month of
Venus," from Etruscan *apru*, from Greek *Aphrō*, short form of
Aphrodite; *APHRODITE*.]

April fool. The victim of a trick played on April Fools' Day.
April Fools' Day. April 1, marked as a day for playing prac-
tical jokes. Also called "All Fools' Day."

Apriori (*ā-prē-ōr'ē*, *ā-prī-ōr'ē*) 1. Proceeding from a known
or assumed cause to a necessarily related effect; deductive.
Compare *a posteriori*. 2. Based on a hypothesis or theory
rather than on experiment or experience. 3. Made before or
without examination; not supported by factual study. [Latin,
from the previous (causes or hypotheses)]

end of a church. Also called
position, *apsis* (see). [Me-
—*ap'si-dal* (*āp'si-dəl*) adj.
Ap-she-ron (*āp-shō-rōn'*).
S.S.R., extending into the
fields.

ap-sis (*āp'sis*) n., pl. *-sides*
(see). 2. Astronomy. The po-
sition of a celestial body from a cen-
ter. [Medieval Latin *apsis*, *ab-*
arch, vault, orbit, from G
gether," from *haptēin*, to fi
apt (*āpt*) adj. 1. Exactly su
Usage note below. 3. Incl
4. Quick to learn or under
evant. [Middle English, fr
past participle of *apere*, to
—*apt-ly* adv. —*apt'ness* n.

Usage: *Apt* and *likely* w
often interchangeable. *Likel*
probability is involved: *It is*
soon. When probability base
is implied, *apt* is the choice
excited. In similar constructi
the possibility or probability
ject: *An angry man is liable*
ment of liable in expressing
are liable (preferably *likely*).
apt, apartment.

ap-ter-al (*āp'ter-əl*) adj. *Arch*
the sides. [From Greek *ap-*
ap-terous (*āp'ter-əs*) adj.
apterous insect. 2. Botany. *F*
slong. [Greek *apteros*, wing
ap-ter-ox (*āp'ter-iks*) n. A bil
(without) + Greek *pteros*, wi
pet. in Appendix*).]

ap-ti-tude (*āp'ti-tūd*) n. *tyōt*
talent or ability; inclinatio
understanding; intelligence
ting; appropriateness. —Se
English, from Late Latin *apti*
aptitude test. A standardiz
ability of an individual to de
Ap-u-lei-us (*āp'yō-lē-əs*). Luc
rist of the second century A.
A-pu-lia (*a-pyōl'yā*). Italian
pying over 7,000 square miles
Roman province. Population,
A-pu-rā (*ā-pō'rā*). A river of
slopes of the Andes and flowi
A-pu-rī-mac (*ā-pō-rē-māk*).
Peru and flowing about 500
bamba and form the Ucayali.
A-pus (*ā'pos*) n. A constellat
near Musca and Pavo. [Ne
swallow, from Greek *apous*,
because the swift is seldom see
foot (see *ped-* in Appendix*)]

A-q-a-ba (*ā'kā-bā*). A seaport
the Gulf of Aqaba, an arm of
miles between the Sinai Pen
Arabia. Population, 9,000.
a-qu-a (*āk'wō*, *ā'kwō*) n., pl.
1. Water. 2. Pharmacy. Liqui
3. Light bluish green to light
water. See *akwā* in Appendix
a-qu-a-cade (*āk'wō-kād*, *ā'kwō*
of swimmers and divers, often
companiment of music. [AQU
a-qu-a-for-tis (*āk'wō-fōr'tis*, *ā'*
isry. Nitric acid (see). [New
A-qu-a-Lung (*āk'wō-lūng*, *ā'kw*
(see), an underwater breathing

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place where persons convicted or sentenced; a penitentiary or jail. 2. Any inurement or forcible restraint. 3. Imprisoned, -oning, -ons. To imprison. *prisun*, from Old French *prison*, from Latin *prēnsiō*, contraction of *prehendere*, to seize. See *ghend-* in

nor) *n.* 1. A person held in custody, especially while on sentence. 2. One deprived of freedom. *prisoner of fate*.

W, P.O.W. A person taken by or during wartime.

In which two teams try to capture them and bringing them to a base. *phus* (see). [So called because it is.]

prissy, fussy, and prudish; *clergy*. (J.D. Salinger).

pristinely *adv.* — *pristin* *n.* *adj.* 1. Of, pertaining to, or typical of; primitive or original. 2. Recorrupted. [Latin *pristinus*, orig-

erj. Archaic. Please; I pray thee. *y thee*.]

priv *cl.* 1. The condition of being in view of, or from contact with, *ecy*.

priv, *pvt.* 1. Secluded from the sight, *ers*; a *private bathroom*. 2. Of or *tal*; *private opinions*. 3. Not available or participation; a *private club*. *erson* or persons, as opposed to *private property*. 5. Not holding *Othello himself is no mere private the Republic*. (A.C. Bradley).

we were looking at the essence is Lessing. — *n.* 1. *a.* *Abbr.* *Pvt.* *w* private first class in the Army *ng* a similar rank in other armies *to* genitals. — *in* *private*. Secret-*ish* *privat*, from Latin *privātus*, *in* public life, deprived of office, *ivare*, to deprive, release, from *ved* of. See *per* in Appendix.*] *as n.*

y *er* *yed* detective as distin-
3 *y* *olice* force. Also called

ies unregulated by state *owned* business in general. 2. A *prise*, especially one operating *se* or *laissez-faire* capitalism. *A* ship privately owned and *government* during wartime to *s.* 2. The commander or one of

prerogative: *privus*, single, individual (see *per* in Appendix*). *lēx* (stem *lēg-*), law (see *leg-* in Appendix*.)

priv-i-legged (*priv'ə-lēd*) *adj.* Enjoying a privilege or having privileges: "None is privileged and no one shall escape disciplinary action." (Kwame Nkrumah).

privileged communication. Law. 1. A confidential communication that one cannot be made to divulge. 2. A communication that is not subject to charges of slander or libel.

priv-i-ly (*priv'ə-lē*) *adv.* In a privy manner; privately. *priv-i-ty* (*priv'ə-tē*) *n., pl. -ties.* 1. Knowledge of something private or secret shared between individuals, especially with the implication of approval or consent. 2. *Law.* a. A relation between parties that is held to be sufficiently close and direct to support a legal claim on behalf of or against another party with whom this relation exists. b. A successive or mutual interest in or relationship to the same property. [Middle English *privete*, *privite*, a secret, privacy, from Old French, from Medieval Latin *privātus*, from Latin *privus*, single, private. See *per* in Appendix.*]

priv-y (*priv'ē*) *adj.* 1. Made a participant in knowledge of something private or secret. Used with *to*: "If a man thinks... he must be privy to his own thoughts and desires." (Shakespeare). 2. Belonging or proper to a person (as the British sovereign) in his private rather than his official capacity. Now rare except in the designation of certain traditional appurtenances of the British monarchy, such as the Privy Council (see). 3. Archaic. Co-*cealed*; secret. — *n., pl. privies.* 1. *a.* Archaic. A latrine; outhouse. 2. *Law.* One of the parties having an interest in the same matter. [Middle English *prive*, secret, private, from Old French *prive*, from Latin *privātus*, private.]

Privy Council. Abbr. P.C. 1. A council of the British sovereign that until the 17th century was the supreme legislative body that now consists of cabinet ministers ex officio and others appointed as a high honor, membership being for life, and has no important function except through its Judicial Committee, which in certain cases acts as a supreme appellate body in the Commonwealth. 2. A council of the Canadian sovereign that promulgates regulations under the authority of the Parliament, consisting of cabinet ministers and the speaker of the house, appointment being for life. — *Privy Council* *prix fixe* (*prē' fêks'*) *pl. prix fixes.* 1. A table d'hôte (see). 2. The price at which a table d'hôte meal is offered. Common in *carte*. [French, "fixed price."]

prize (*priz*) *n.* 1. Something offered or won as a reward for achieving superiority or excellence in competition with others. 2. Something offered for winning in a game of chance. 3. A thing worth striving for or aspiring to. — *See* Synonyms at *bonus*. — *adj.* 1. Offered or given as a prize; a *prize* *bon*. 2. Given a prize, or likely to win a prize; a *prize* *cow*. 3. Worth of a prize; first-class. Often used ironically: a *prize* *man*. — *tr.v.* *prized*, *prizing*, *prizes*. 1. To value highly; to cherish, or treasure. 2. To estimate the worth of something and evaluate. — *See* Synonyms at *appreciate*. [Middle English *pris*, value, *PRICE*.]

prize (*priz*) *n.* 1. Something seized by force or taken as booty, especially, an enemy ship and cargo captured at sea during wartime. 2. The act of seizing; capture. [Middle English *prise*, from Old French *prise*, from Vulgar Latin *prehendere*, to seize.]

SB 2283
Senate Natural Resource Committee
February 7, 2003

Good morning Chairman Fischer and Members of the Senate Natural Resources Committee.

My name is Rosemarie Myrdal. I know many of you personally both from my days as a Legislator and as Lieutenant Governor. It is a pleasure to see you and have this opportunity to address you this morning.

North Dakota has had its share of controversies regarding easements and land acquisition for public purposes and I, like some of you, have given this issue much consideration with regard to our future. North Dakota is changing. There is no better time than the present to revisit previous thinking. This bill presents that opportunity.

We have many land use challenges before us. The Red River corridor has had flooding challenges in recent years that are unprecedented. Land use has changed as a result and private property owners have been severely impacted. Elected officials have been confronted with land use planning needs beyond anything they have ever experienced or even imagined. Our urban areas are growing, and the relationship between city sprawl and agricultural needs is an issue of growing concern. Our economy is changing. While traditional agricultural enterprises remain a critical part of our economy and life style, other opportunities are making themselves available. Many of these opportunities involve the promotion and well thought out use of one of our states most unique and precious attribute - our natural resources.

North Dakota has a landscape, a heritage, a culture and a story to tell like no other. We are rich in open space, wildlife, diversity, scenic vistas and pioneer history. We have indomitable spirit and pride in what our ancestors accomplished and what we were entrusted to carry forward into the future. And, we have a long established principle of standing strong for private property

rights and encouraging independence, entrepreneurship and self reliance. This bill is about those things, and more.

My own north east region of the state, and area we proudly call the "RENDEZVOUS REGION", is working hard to diversify its economy. In that effort we actively promote our natural resources, our woodlands, our beautiful Pembina River valley with its gorges, striking vistas, its historic and cultural heritage and its bountiful and diverse wildlife populations. Land protection of the type provided for in SB 2283 complements our efforts, and I believe it would also do so in the Missouri River corridor.

To keep things in perspective however, let me first tell you what this bill is not about. You will hear from individuals and groups opposed to this Legislation that its passage will allow nonprofit groups, or, worse yet, the federal government, to take over and control our state. Attempts will be made to convince you that this bill will facilitate the federal government, conspiring with unseen but sinister forces, to render North Dakota an economic desert under inappropriate control of environmental extremists. You will be told that by allowing permanent easements the private property rights of our citizens will be taken away. This bill does not facilitate any of those things. I have more faith in our form of government and our citizens who control it - I hope you do as well.

This bill provides a wide array of benefits to private landowners and the public:

- First and foremost, this bill recognizes the private property rights granted to citizens in every other state to voluntarily convey permanent easements.
- It provides tools to elected and appointed officials to appropriately compensate private landowners for river corridor lands frequently flooded and damaged but useful for their great public values as open space, parks, outdoor classrooms, buffer areas and green space.
- It provides an option for private property owners to be fairly compensated for dedicating all or portions of their land to public values
- It provides a mechanism for private landowners to use easements to take advantage of tax and

estate planning tools accommodated in IRS regulations.

- It provides a mechanism, perhaps the ideal mechanism, to assure **VOLUNTARY** long term land protection while leaving the land in **PRIVATE OWNERSHIP** and under private management.
- It provides a mechanism for private landowners interested in placing long term protection on their property to work with groups other than the federal government, such as agricultural land trusts, political subdivisions, non profit conservation groups, etc.

In closing, let me clarify 4 other points critical to this legislation:

1. The federal government already has the right to purchase and hold permanent land protection easements in North Dakota. They have purchased over 150,000 acres of permanent grassland easements over the last 4 years and currently have a list of well over 159 landowners waiting to have their lands evaluated for a permanent easement offer. This bill will not in any way alter the ability of the US Fish and Wildlife Service to conduct their easement programs in the state. You will likely hear much about the federal government in general and the US Fish and Wildlife Service in particular, before the morning is over, but please don't be confused:
THIS BILL IS NOT ABOUT THE US FISH AND WILDLIFE SERVICE.
2. Permanent land protection easements provide an effective **ALTERNATIVE TO ZONING** or other types of land use regulations that may not appropriately compensate private landowners.
3. All land protection easements are **VOLUNTARY**. They provide **OPTIONS** for landowners.
4. Permanent land protection easements **COMPENSATE** private landowners either through direct payment, tax deductions or some combination of the two.
5. Facilitation of **GOOD LAND STEWARDSHIP** is always a good thing for North Dakota, no matter where it occurs in our great state.

It is time this issue of voluntary, compensatory private land protection receive due consideration for what it is: an option for private landowners and a tool that can help shape the North Dakota of the future in a manner that is fair, equitable and fiscally responsible. It is time to restore full

Deanna D. Smith
Operator's Signature

10/21/03
Date

private property rights to our farmers and ranchers. It is time to support SB 2283. I respectfully request that you join me in doing so.

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Deanne Wallis
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10/21/03
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**TESTIMONY
SENATE BILL 2283**

February 7, 2003

1. SB 2283 would allow the sale of easements for specified land values for certain areas in North Dakota, including the counties adjacent to the Missouri River.
2. SB 2283 would allow a willing landowner along the Missouri River to sell a perpetual easement to a willing buyer which would allow the owner to retain all his present rights to the land with the exception of his right to develop the river frontage.
3. The easement would be a specific document negotiated by the seller/buyer and would describe the specific area, the duty of the owner to maintain or establish tree and shrubbery growth and would name an enforcer such as the county government.
4. Since no "buyer" would purchase this type of easement unless it would be permanent, the passage of SB 2283 is necessary.
5. This no-development easement is utilized in many areas of our nation to control urban growth into desirable farm land or scenic mountain valleys. It is a win-win situation for the environmentalists and owners who wish to preserve present values.
6. We urge the passage of this bill to enable the preservation of wooded areas along our Missouri River.

**ANDY MORK, CHAIRMAN
MORTON COUNTY WATER RESOURCE DISTRICT
3362 22ND Avenue
Mandan, ND 58554**

Phone: 663-3840

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Real Estate / By Kim Bower-Spence

Going, Going, Gone

Urban sprawl threatens more prime land

52283

Even as more states lock precious farmland into preserves, the United States' bank of high-quality food-producing land continues to erode.

"America developed twice as much farmland in the 1990s as it did in the 1980s," reports Ralph Grossi, president of American Farmland Trust. AFT says 86% of America's fruits and vegetables and 63% of its dairy products flow from farmland threatened by sprawling development. Between 1992 and 1997, the nation paved over farmland about equal to the size of Maryland—6 million acres. Texas tops states losing the most high-quality land. Ohio, North Carolina, Georgia and Illinois follow.

It's no coincidence that some of the best land suffers the most risk. "Many of our cities, by nature of original settlement, are on that highest quality land," Grossi says.

Squandered? AFT blames gluttonous land use and poor planning for farmland's demise. While the U.S. population grew 17% from 1982 to 1997, urbanized land grew 47%. In 20 years, acreage size for new housing doubled. Since 1994, 10-acre-plus lots have accounted for 55% of land developed.

Some Mid-Atlantic communities lost more land in the 1990s than they did in the previous 300 years of settlement. Local preservation efforts are working overtime to stem the tide. Pennsylvania topped Maryland to become the state with the greatest number of preserved acres and farms in 2002—more than 244,352 acres. But the state Bureau of Farmland Preservation has a backlog of 1,700 applicants, according to director Mary Bender.

Many counties have floated bonds to pay for preservation programs. "Every time it goes to the public, there's overwhelming support," reports Bender. "We have been very successful, especially in putting together large contiguous blocks of farmland."

Lancaster County, Pa., touted as the most productive nonirrigated farming county east of the Mississippi River, has preserved more land than any other county in the nation. When you factor in both public efforts and the private Lancaster Farmland Trust, the county has preserved 50,747 acres, about 13% of its total agricultural land and forest base.

"Ag preservation is a critical part of proper balanced growth in a place like Lancaster County," asserts Darwin Boyd, former president of Lancaster Farmland Trust and a current member of the state Ag Land Preservation Board. He notes that Lancaster County's plan includes "urban growth boundaries" to attach future develop-

ment to existing boroughs and municipalities and curb sprawl. The goal is to prevent farms from being surrounded by houses.

Two dozen states have authorized farmland preservation programs. Grossi expects that all will someday purchase development rights to protect farmland.

"It's appropriate for the public to help private landowners because the benefits will flow to the public," he says. Purchase of development rights, a partnership between state and local governments, is a significant step. This pays farmers the difference between development value and farmland value, in exchange for an easement preventing development.

"It brings an element of fairness to the land use conflict," Grossi adds. Sale of development rights recognizes owners' property rights and gives the public a way to compensate. That's a big improvement over regulatory approaches, he says. ■



Ohio farmer Michael Clark specializes in renting land destined for development near Dayton. He farms with 83 landlords on more than 300 parcels.

PHOTO: DARRELL SMITH

Top Producer • January 2003 • Bonus Page

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Fifty-Eighth Legislative Assembly of North Dakota
SENATE BILL No. 2283

Testimony

Chairman Fischer, and members of the Committee, thank you for providing the Red River Basin Commission this opportunity to testify on behalf of Senate Bill 2283. The Commission supports this language and feels the bill addresses a number of important issues for residents of the Red River Basin.

The Commission began development of a Conservation Reserve Enhancement Program (CREP) for the Red River Basin in December of 2001. CREP is a voluntary set-aside program that leverages federal dollars with state funding to place easements on land that is deemed to be a resource concern. Following a directive from the membership, Commission staff convened a multi-jurisdictional interagency meeting to discuss CREP, develop basin-wide goals and objectives, and begin preparation of the proposal. A first draft of the proposal was presented to basin residents in a series of meetings held throughout the Red River Basin. In August of 2002, The Commission worked with staff from the Red River Riparian Council to convene meetings with local landowners in Pembina, Valley City, and Wahpeton. Similar meetings were held in the MN side of the Basin. The draft CREP proposal was presented and attendees were invited to provide feedback and comments. Based on that input, the Red River CREP proposal is targeting wetland restorations and riparian buffers and filters as a means to address flood damage reduction concerns of basin residents and resource professionals.

Although the proposal will continue to evolve as we try to address the array of issues surrounding a program of this magnitude, the proposal will provides three easement options for landowners, one of which is a perpetual or long-term (99-year) option. As the Commission received feedback on its CREP proposal, local landowners and resource officials were seeking a set-aside program that would provide an opportunity to set-aside chronically flooded cropland in a long-term or perpetual easement.

As you all know the Red River Basin has experienced devastating flooding events over the past few years. Some of these events, like the flood of 1997, were widespread and caused billions of dollars in damage in the Red River Basin. Smaller events, but no less devastating to individual producers, have occurred and will continue to occur in the Red River Basin. One of the goals of the Red River Basin CREP is to mitigate flood damages. By providing landowners with easement options that meet their needs as well as the resources needs, we will provide long-term protection to the basin's most sensitive resources from persistent flood damage.

Deanna Waller
Operator's Signature

12/21/03
Date

**Senate Natural Resources Committee
SB 2283 relating to conservation easements**

Testimony of David Borlaug, President, North Dakota Lewis & Clark Bicentennial Foundation, Washburn

Mr. Chairman and members of the committee, my name is David Borlaug, and I am President of the North Dakota Lewis & Clark Bicentennial Foundation, a non-profit organization which operates the North Dakota Lewis & Clark Interpretive Center and Fort Mandan at Washburn.

I have been active with Lewis & Clark-related activities for 12 years now, mostly as a volunteer, and now as a full time staff person with our Foundation. I served three years as president of the National Council of the Lewis & Clark Bicentennial as part of my volunteer activities.

Throughout these past 12 years, I have learned to appreciate more and more the scenic beauty our state offers, especially in its rich river valleys. I have also come to appreciate the richness of our multi-cultural past in those river valleys. Right here, where we are today, is where cultures thrived a thousand years ago. These were our first farmers, growing corn, sunflower and beans long before any white settlers arrived.

This is a Land of Legends, including Lewis & Clark. It is a special place, sought out by people from across America and around the world. Last year, we hosted over 35,000 visitors to the Interpretive Center, and visitation at Fort Mandan was up 80 percent—and that's a year before the Bicentennial, which started January 18!

Our Foundation is very concerned about maintaining as pristine an environment as we can, especially around the historic sites that dot the Missouri River Valley, like a string of pearls. We are not anti-development, not by any means—but we share with many landowners a desire to maintain a sense of balance.

My friend Tracy Potter, who leads the Fort Abraham Lincoln Foundation, planned to be here today as well, but another conflict developed. If he were here, he would tell you that this is not an issue of "preservation versus development," because preservation IS development! The maturing tourist audience has come to appreciate the value of the natural setting that we offer—indeed they come to demand it in their visitor experience—and they will seek it out wherever it exists. And it certainly exists, here in the Missouri River Valley, both at Fort Abraham Lincoln State Park and at Fort Mandan, and Tracy and I share real concerns about the future of our viewsheds.

Mr. Chairman and committee members, this legislation is all about landowner rights. Our Foundation has been approached by landowners who want to ensure that their agricultural property stays that way, and is not commercially developed. They wonder what our Foundation can do for them. With our financial limitations, we cannot afford to offer cash for easements. However, in virtually every other state, Foundations like ours benefit

because landowners may donate their easements, with a substantial tax savings allowed by the IRS.

But, the IRS only allows such deductions for perpetual easements.

This bill has been designed by and for landowners. It makes it financially possible for today's stewards of the land to ensure that the generations that follow them will share in their love and appreciation for what has been entrusted to them.

I urge you to give this bill a solid do-pass, and lobby for its support in the entire Legislature. Thank you.

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Obnoxious perpetuity requirements, etc....

Landowners are becoming more concerned about conservation easements. Ranchers, farmers, and forest owners are beginning to realize that conservation easements are not simply the innocent-sounding solution to the property owner's financial woes, but, rather, that these transactions fundamentally diminish the equity belonging to the property owner and pose a threat to the future of private property on a large scale.

Associated with these two fundamental reasons for avoiding conservation easements are numerous technical problems. These technical problems are likely to come to the forefront in the future as holders of land from which an easement has been separated try to use the land in ways that were overlooked when the easement was negotiated or when uses of the land inadvertently interfere with environmental resource values that become a greater concern as time passes.

One of the technical features provided for by the Uniform Conservation Easement Act, which has been passed in over half the states of the Union, is the use of third party enforcement of the terms of the easement. An early white paper of PRFA (Property Rights Foundation of America) that passed around the country for discussion was published in Agri-News on January 3, emphasizing that, although it flies in the face of classical contract law, third party enforcement can take place when a state legislature passes the Uniform Conservation Act. This is perfectly true.

However, a further point in the white paper was based on a misreading of the Uniform Act. Others are standard by this reading of this technical legal document, but PRFA does not maintain this interpretation. This misinterpretation, that the name of the third party enforcement agency would not have to appear on the conservation easement, was not repeated in the final published versions in mid-2002 of PRFA's publication "Reliance Easement."

I agree with the Montana Land Reliance's argument in their letter to the editor (Agri-News, January 17) that this point in the article printed earlier in January needs correction, but I firmly disagree with the remainder of their attack on PRFA's work to expose the dangers of conservation easements. First, with respect to third party enforcement, the Montana Land Reliance letter states, "...there is no third party right of enforcement of conservation easements." This is incorrect. Without the state passage of the Uniform Act, there is no such third party enforcement, but with passage of the Act, third party enforcement is indeed facilitated. This is one of the main goals of the Uniform Act. When a provision for third party enforcement is provided for in some way in the conservation easement, it constitutes a major threat to the property owner. The landowner might not notice a provision buried among many legal details of a document of a type that is commonly 20 to 50 pages long. Or, he might not realize its significance, or perhaps he

might imagine that it kicks in only if the conservation easement holder becomes defunct. Many scenarios can be imagined. None are predictable except that, whether or not the landowner has noticed and understood the provision, the designated third party has the power to bring a proceeding to enforce the conservation easement, even if the holder of the conservation easement is satisfied with the situation.

The Montana Land Reliance letter states that, "Contrary to LaGrasse's claim, the Montana Land Reliance is not a quasi-government agency. We are neither funded by the government nor participate in land transactions with the government." However, I made no statement about the Montana Land Reliance. In a broad sense, I advocate that a disclaimer somewhat similar to the above statement by the Montana Land Reliance be incorporated in the conservation easement. For what it's worth, the conservation easement could at least state in writing that it is non-transferable to a government agency. A reverter clause might be considered, but this idea is as yet unproven. The question arises as to how legally binding a few generations from now is a land trust's promise to day not to accept government funds.

Another question arises. If the conservation easement is conveyed to government, wouldn't the land trust write into the easement that it becomes the third party enforcement entity? Furthermore, a local land trust could convey the land to a larger

land trust before it goes to the government. This is not speculative. Sometimes a conservation easement goes through two or three land trusts before ending up in government hands. Any one of these could become the third party enforcement entity, unfamiliar to the original landowner. In addition, this trail of ownership in deed conveys the conservation easement to government without betraying the original land trust's pledge not to accept government funds.

One of the main reasons for incorporating provisions for renegotiation of the conservation easement is to forestall third party enforcement. The Montana Land Reliance letter completely evades the idea of providing for renegotiation, which might provide a defense if third party enforcement, provided for in the Uniform Act, becomes a practice. Instead, the Montana Land Reliance letter emphasizes that "conservation easements are perpetual because federal law requires perpetuity to receive federal estate tax benefits."

As everyone knows, this is all too true. However, their letter fails to mention that

• Obnoxious perpetuity requirements, etc....

Continued from page 3
federal estate tax (inheritor's estate tax) reform is actively under discussion in the US Congress. The letter also fails to mention that, although the land trust movement is very successful in acquiring for itself millions of dollars of federal government grants annually, it is conspicuously absent with any support for eliminating the estate tax. And, I understand that the land trust movement is absent in working to repeal the requirement for a perpetuity clause to qualify for favorable federal tax considerations.

Property rights advocates have been working for several years for these tax reforms. Where are the land trusts? Is it possible that their absence in advocating for federal tax reforms that would relieve some of the pressure on the landowner can be explained by the fact that the land trusts derive part of their existence and their often lucrative fees from the pressure that the landowner experiences on

may evolve in the future. This dangerous type of open-ended provision should be renegotiable in the future, as should provisions restricting the use of water resources for which the rancher may find a change in need, and the conservation easement that may conflict with existing grazing practices, and many other possibilities, which only the rancher would be likely to imagine. It would be in the interest of the rancher to think as creatively as possible to try to overcome the pitfalls of the conservation easement's inflexibility with respect to ranching and practical land uses and to build a more flexible transaction, keeping in mind that equity is vulnerable to inflexibility.

Rather than further dissect the letter by the Montana Land Reliance, here is a three-part suggestion. If the multi-billion dollar national land trust movement has good faith, let it use the massive lobbying resources of it and its allied environmental organizations toward elimination of the third party enforcement provision, repeal of the estate tax, and revision of the IRS code to eliminate the requirement of perpetuity to permit tax advantages for landowners who allow conservation easements.

Carol W. LaGrasse
President, PRFA
www.prfausa.org

PERPETUAL PROPERTY RIGHTS

An evaluation of the impact of perpetual easements versus property owners' rights.

By the Landowners Association of North Dakota (LAND)

Suddenly 'conservation' organizations, that have previously treated with disdain the rights of property owners, are claiming that they are compelled to protect the property owners' right to sell perpetual easements. It comes as no surprise that these same 'conservation' groups are wanting to purchase the easements. Let's consider some simple facts in laymen's terms:

There are at least two types of perpetual easements:

- **Developmental easements** - these allow power lines, telephone lines, wind generators, water lines, diversified land use, mining, oil drilling, livestock and/or wildlife habitat, and any number of activities that may benefit the landowner in various ways.
- **Restricted Use easements** - This type of easement limits the activities of the landowners and gives the control of all activities to the easement holder forever. As the consideration for the permanent transfer of control is a one-time payment, the effect the limitations have on the landowner is of little concern to the easement holder.

A sale of property implies at least two things: transfer of ownership and assumption of responsibility. The transfer of ownership implies the transfer of certain *rights* to the control, use, development, modification, improvement, etc. of the acquired property. The assumption of responsibility is the condition of the sale that requires the owner to carry out the *obligations* implied by the position of ownership such as payment of taxes, upkeep, stewardship, respect for the rights of adjacent landowners' rights, etc.

The sale of a perpetual easement, in reality, transfers only the ownership of the property and the implied rights of ownership. Thus, a perpetual easement is 'ownership without responsibility.' The separation of these two characteristics is a violation of principle. This translates into 'control without obligation.' This does not comply with the terms of a Democratic Republic.

The idea that the ability to sell a perpetual easement is the right of a property owner is not a long held belief. It is a notion that has more recently been promoted and misconstrued by those wishing to acquire such easements. To maintain the position that a landowner has the right to sell a perpetual easement is to endorse the idea that everyone should be allowed to exercise any and all of their rights without regard to how such actions may violate and/or infringe upon the rights of others.

This certainly was not the concept held by the Framers of our Constitution concerning property rights or any other rights. One basic premise of law is that individuals are to be held accountable for how their actions affect others. When exercising a right infringes upon or violates the rights of another individual, the law places limitations on those rights for all individuals. In many, if not most, cases the law invokes a penalty when those limitations are exceeded or ignored.

The sale of perpetual easements is a violation of the rights of every future owner of a parcel of land the easement is sold on and in many cases, an infringement on the rights of adjacent landowners. Usually it becomes an infringement even on the landowner who sold or granted it.

The Landowners Association of North Dakota (LAND) is the only grassroots organization in North Dakota dedicated solely to the purpose of defending, preserving and restoring the rights of private property owners. It was founded in 1989 by a group of landowners concerned about the deterioration of private property owners' rights. LAND has been identified by the opposition as the one group willing to take the initiative in promoting the wise use of property. LAND is dedicated: To the preservation of the revenue generating activities of our farmers and ranchers along with their most valuable, renewable resource - Land. To the preservation of our wildlife, environmental and soil resources through voluntary and compensatory programs. To the preservation of private property rights.

LAND, P O Box 38, Bismarck ND 58502-0038 Phone/Fax: 701-667-4185

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when new telephone or electrical lines are needed?

If I sell a conservation easement, I can still use my property just as I always have.
FALSE. No, you give up control of all property covered in the easement. Forever, there will be an organization or agency with the power to look over your shoulder and approve or disapprove your management practices.

Most easements require you to give access at all times, even during the growing season when access can damage crops. You may have to obtain approval for weed control, grazing or other management practices. Many easements allow "approved" practices, but may not list specific practices. That's a loophole in the contract that allows the easement holder to change the list of approved practices without your consent.

Imagine selling a grassland easement, believing that is all your property would ever produce. It sounds good, right? Then you get an offer to have wind generators installed. You look at the easement and realize that, in order to dig into the ground to pour a foundation, you have to negotiate an addendum to the easement. This entire choice to alter the agreement is up to the organization or agency owning the easement. This is a situation already facing some North Dakotans.

may into yourself or your heirs with an entirely different partner than the one to whom you sold the easement.

I need money right now and a conservation easement will put cash in my pocket.

THINK AGAIN. If your land is mortgaged, chances are the conservation easement payment will go directly to the lender and may be used for the interest payment instead of reducing the principle. Read the fine print. Regardless, you are responsible for paying income taxes on the full amount of the easement. Selling an easement may actually harm your cash flow because of the tax complications.

My easement allows "normal management practices," so anything I normally would do with my property will always be allowed.

FALSE. While the easement might allow for "normal management practices," the definition of that term may change over time and in ways you can not imagine now. Selling an easement to be managed in conjunction with an organization or agency does not guarantee a particular management practice for years to come. Many easement contracts allow the purchasing organization or agency to sell or transfer title to the easement, so it may be an entirely different entity who interprets "normal management practices," for your heirs or future owners of this property. For example, during the next dry spell or short grass summer the new "management specialists" may decide to limit how many cows you can have in your pastures and for how long. You could be under the same rules as the ranchers who run cattle on our National Grasslands except that you are still required to pay all the property taxes!

by state law, so organizations that purchase perpetual easements if the title is given to Federal agencies. While this violates the spirit of the law, it is technically legal in the mind of some officials.

Before you consider selling off your "management rights" you might want to talk to some of the 2nd and 3rd generation North Dakotans who have some of this state's 790,000 + acres of perpetual wetland easements: that the previous owners have sold off. They are not "happy campers."

Provided by
Landowners Association of North Dakota
(LAND)
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Website: www.ndland.org

DEDICATED

To the preservation of the revenue generating activities of our farmers and ranchers along with their most valuable, renewable resource - Land.

To the preservation of our wildlife, environmental, and soil resources through voluntary and compensatory programs.
To the preservation of private property owners' rights.

CONSERVATION

EASEMENTS

What every landowner should consider before signing any type of conservation easement.

We strongly urge you to seek professional advice from accountants and attorneys experienced with easements before you make a decision

Shorter term (30 years or less) easements are better than perpetual easements.
TRUE. Easements of a shorter duration allow future generations more options and flexibility in managing their property. But short term easements still give up control of your property, so it pays to talk to professionals before you make any decisions.

Conservation easements are the only way to protect native sod.
FALSE. Most of the land suitable for cultivation in our state has already been broken. There is no incentive for breaking more land unless tillage is the only effective means of weed control.

Some of the land identified as "native sod" for the purpose of conservation easements was farmed within recent memory. If the characteristics of native sod cannot be distinguished between that which was never plowed and farmland which was planted back to grass, then landowners must be doing a pretty good job managing their prairie. If we need more prairie, we can always convert more farmland to grass. It just takes ingenuity. North Dakota landowners already possess.

Conservation easements will save me money in taxes.
THINK AGAIN. If you own land valued at \$100/acre and sell a conservation easement for \$30/acre, you pay income tax on the \$70. Since this was a sale of a tangible piece of your property your basis for tax purposes in the property is reduced to \$70. When you sell the land if it appreciates the difference in sale price over the \$70 becomes taxable. Hence you pay tax on the \$30 during the second sale.

We're developing too much land now. If we keep up at this rate, we're going to be all developed and not have agricultural land.
FALSE. According to the National Conservation and Resource Service's (NCRS) 1997 National Resources Inventory, the rate of development of agricultural land in North Dakota for 1992-97 was approximately half of the rate from 1987-92. Development has slowed and North Dakota is losing population. We are not in danger of running out of agricultural land.

A conservation easement requires you to allow hunting.
TRUE or FALSE, depending on how your lease reads. Many conservation easements currently sold in North Dakota are governed by the National Wildlife Refuge System Administration Act, so you need to read the fine print to see all of the requirements. Many of the funds and support for purchasing conservation easements come from hunters who believe they will have automatic access to your property, but that isn't always required.

I've read the contract and understand it, so I should just sign.
THINK AGAIN. Words have certain meanings and sometimes, those meanings change. For example, some of the easements sold in ND today state that "the rights and interests granted to the United States, herein shall become part of the National Wildlife Refuge System and shall be administered by the USFWS, pursuant to the National Wildlife Refuge System Administration Act, 16 USC 668dd." Have you read that piece of legislation? Do you understand it? Does it allow the agency flexibility with rules and definitions? Have you ever known an agency to change rules? THINK! Then consult an attorney and accountant experienced with easements.

Selling property with a conservation easement will be easy.

FALSE. You are required to inform the buyer a conservation easement exists. This may lessen the value of the property, the number of people willing to share title with an organization or government agency, and the number of banks willing to lend money for a loan to purchase property with a split title.

Some easements require the bank to take a secondary interest in deference to the easement. This can dramatically decrease the willingness of a financial institution to loan money on the property.

Because the holder of the easement already owns part of the title, they may have an interest in purchasing the remainder of the property. If this is a non-profit organization or Federal agency, that may take the property off tax rolls.

My neighbor sold a conservation easement last year and he hasn't had any trouble, so my heirs and I won't.

FALSE. Perpetual easements generally don't cause problems right away. But wait 20 or more years and see what problems crop up.

Thousands of acres of wetland easements were sold in ND during the 1960's and 70's, but most landowners didn't experience problems until the next generation took over the property. Now basic terms seem to have been redefined and boundaries covered by the easement changed. The original maps were "lost" or are "not available." Many of these landowners would love the opportunity to buy back the easement and regain control of their property.

A conservation easement will preserve my property just as it is, forever.

FALSE. Land changes. Each season brings change to the land. Some changes are major and others minor but, over time, even with no intrusion or help from man, land will change.

The purchasing agent seems like a nice person so I don't need anyone else to review the easement contract before I sign.

FALSE. The purchasing agent wants something that you have - your property. It is in that person's best interest to be pleasant and agreeable. The purchasing agent works for someone else - not you.

In any type of land transaction, you need professionals (an accountant and attorney) with experience in easements, tax, estate planning and property transactions to represent you and your best interests. If you are dealing with a perpetual easement, you want to double and triple check the contract. Most land sales deal only with the property until it is sold, but a perpetual easement is forever.

Keep in mind that, however pleasant the purchasing agent is, that will likely not be the person with whom you will deal on easement management issues and will certainly not be the person to manage the easement during its lifetime. Many easement contracts allow the easement to be sold, so your heirs or future owners of the property may end up dealing with an entirely different organization or agency holding the easement. That's why you need professional assistance to look at all of the options before you sign a contract.

**SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 7, 2003
MRALA**

**PAUL R. FEYEREISEN
SB 2283**

Mr. Chairman and members of the committee: I'm Paul Feyereisen, President of the Missouri River Adjacent Landowners Association (MRALA) and a landowner in Burleigh and McLean counties.

The exception in Subsection 2 of Section 1, specifically exempts the counties contiguous to the Missouri River and it's lakes from 99 years to perpetual. The landowners nearly without exception, oppose perpetual easements.

Forever, is unimaginable in time, in fact, so is 99 years. If any entity cannot purchase a 99 year lease because it is not long enough, that is simply ridiculous. In most all instances, easements on land usually devalue the property for our sons and daughters and our grandchildren.

Perpetual easements usually shift the burden or problem to adjacent property owners. In other words, neighbors beware! Whatever is a fantastic price for an easement today, most likely will be many times greater 20 or 30 years later.

In summary, nearly all our 135 members oppose this legislation. We encourage the committee to consider voting a do not pass.

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Deanna Waller
Operator's Signature

10/21/03
Date

Testimony in opposition to SB2283

**Dennis Miller
9467 63 St NE
Lawton, ND 58345**

Chm Fischer and members of the Senate Natural Resources Committee

My name is Dennis Miller. I am representing myself and LAND.

LAND opposes perpetual conservation easements. Perpetual is longer than any of us will see in our human lifetime. We cannot hope to envision what social, economic or scientific norms will rule in future generations. We do not know if the language that describes the terms of the easement will be a blessing or a curse to future owners of the property.

LAND feels that if these easements are warranted and necessary, future generations will see the merits of signing an extension to the easement.

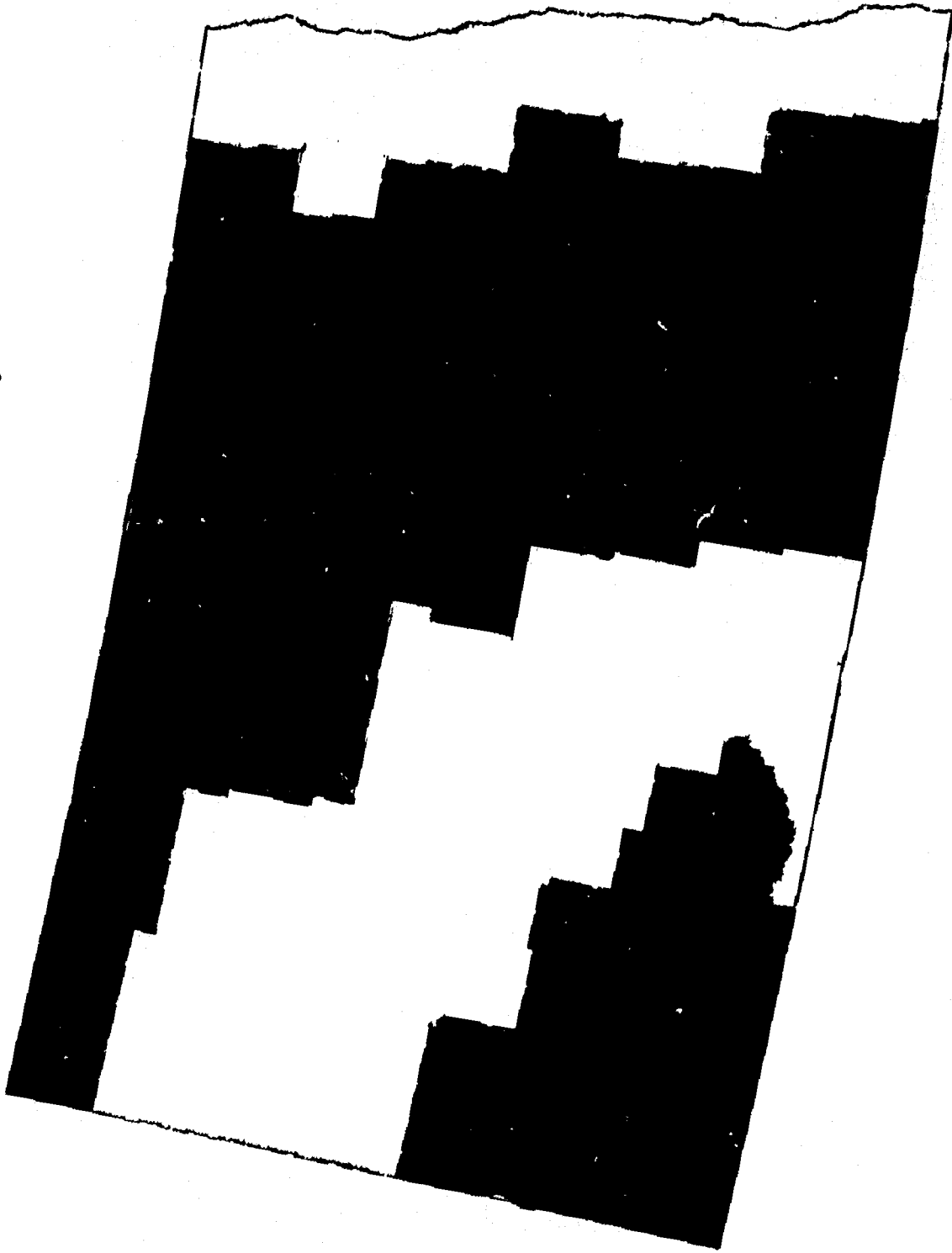
In past legislative sessions, LAND has been criticized for not supporting the "rights" of property owners to sell perpetual easements on their property. Current ND law limits the duration of easements and LAND supports these limits. Our policy, as defined by resolution, supports limiting easement length to 10 years as in the case of CRP. If the buyer and seller agree that the easement is beneficial, they can renew the easement for another 10 years.

Thank you

Dennis Miller
Operator's signature

12/21/03
Date

North Dakota Under SB 2283
White areas may have easements,
no development



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Diana M. Sullivan
Operator's Signature

10/21/03
Date