

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1472

2005 HOUSE AGRICULTURE

HB 1472

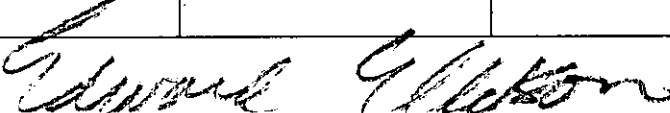
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1472

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---3---05

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 39.0
Committee Clerk Signature 			

Minutes:

CHAIRMAN NICHOLAS: We will open the hearing on 1472.

SCOTT KELSCH; State Representative from District 11 in Fargo. [[[please see Scott's printed testimony]]] Scott spoke to the devastating flooding problems in the Red River Valley etc.

The bill is relating to duration of conservation easements. The testimony was the extent of Rep. Kelsch's testimony.

SENATOR MATHERN: DISTRICT 11 IN FARO. I am a cosponsor of HB 1472 I think this legislation is important. In terms of the long term planning in terms of floods, mitigation In the Red River Valley. I have gone through some of those floods. I know that there is a better way to prepare for those better way to prevent damage. One way is granting the way for percent easements along some of the Red River land. I think this is the vehicle to do that. Steward ship of our land is important now and good for future generations. Permanent easements

Are a part of that stewardship. I encourage you to vote favorable for this legislation. HB1472

REPRESENTATIVE ONSTAD: Why are you incorporating that into the Red River Valley.

SENATOR MATHERN: Some day the Red River will become a source for water way.

The Missouri will become a source of water for the entire state.

REPRESENTATIVE DAMSCHEN: What if a person signs a conservation easement after five or ten years is dissatisfied with the terms of the perpetual easement.. What avenue dose he have to appeal.

SENATOR MATHERN: The easement that is agreed to is permanent. It is up to the people that negotiated the easement. A permanent easement is permanent. It is up to the land owner to negotiate different terms if possible but again permanent is permanent.

REPRESENTATIVE DAMSCHEN: Would shorter easements be better. It is the right of the land owner to negotiate.

CHAIRMAN NICHOLAS: How many people do we have in support of this bill and how many for opposition.

ANDY MORK: BOMMM ST BD??

We own a mile of river front. We want to leave it . We believe something this is desirable.

All easement are permissive as to selling. It is a legal document. You don't want surprises down the road. Other states do allow permanent easements.

TRACY POTTER: TRACY IS FOR THE BILL. [[[PLEASE SEE PRINTED TESTIMONY]]]

MIKE EC ENROE: NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY.

THE CHAPTER SUPPORTS THE BILL. [[[PLEASE SEE MIKE MC ENROE PRINTED  
TESTIMONY]]]

JESSICA DELORME-NORTH DAKOTA SIERRA CLUB: [[[SEE PRINTED  
TESTIMONY]]] WE URGE A DO PASS ON THIS BILL.

JOHNATHAN BRAY: I REPRESENT MYSELF. He talked about tourism and the  
importance of it. For the state of ND. Conservation will protect land. No one can force you to  
sell easements. PLEASE PASS HOUSE BILL 1472.

REPRESENTATIVE ONSTAD: Can anyone once in a easement ever get out of it.

MIKE MC ENROE; The US FISH AND WILD LIFE HAS MADE SOME CHANGES  
IN EASEMENTS, TRADES, MORE THE LETTING AND INDIVIDUAL OUT OF AN  
EASEMENT HE SOLD.

CHAIRMAN NICHOLAS: Mike, it will come up in our session once we take action on this  
bill. What percentage of North Dakota currently dose the US FISH AND WILD LIFE. All  
easements. What percentage dose the US FISH AND WILDLIFE HAVE/  
Held in easements.

MIKE MCENROE: 800,000 thousand acres of wet lands protected by perpetual easements.  
120,000 acres of grass land. Protected by easements.

WOODY BARTH: FARMERS UNION . WE OPPOSE BILL.

Fifteen years should be the maximum easement.

BRIANT KRAMER: Farm bureau oppose perpetual easements. You can't back away from  
them.

To many of our members have had to many problems with buying land that had perpetual easements. They have received no benefice. They have received no benefits from it yet they have to live with it.

That is the nuts and bolts of it.

BRIAN: I represent the lignite energy council. We are comprised of the power companies and Coal companies that operate in ND. The member of the LEC the power plant's and coal mines for the most part are located in counties that are continues to the Missouri River. McLean and Mercer counties in particular. Because of where the coal is found and also the need to be close to a large source of water from the Missouri River. The reason that the Lignite council is opposed to this bill is potential restrictions on land that will be needed of land as to power plants, coal mines or transmission lines. Which we all know will be need for our future growth. They would become a implement for the council.

If the coal lease comes first it would have priority over a later easement.

CURLEY HAUGLAND: Perpetual is a long time. Trying to get the Government to take care of weeds etc is not easy. Public ownership we thing is better.

PAUL FIREHOUSEN: MISSOURI VALLEY LAND OWNERS ASSOCIATION.

As land owners we are opposed to bill.

REPRESENTATIVE DAMSCHEN: Private ownership will do as well as government.

COMMITTEE MEMBERS WE WILL CLOSE THE HEARING ON HB 1472

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1472

House Agriculture Committee

☐ Conference Committee

Hearing Date 2---4---05

Tape Number	Side A	Side B	Meter #
ONE	A		158 TO 210,2
Committee Clerk Signature <i>Edward D. Ellyson</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee members, we will open on HB 1472.

What are your wishes on HB 1472?

REPRESENTATIVE HEADLAND MADE A MOTION FOR A DO NOT PASS

REPRESENTATIVE BRANDENBURG SECONDED THE MOTION.

THE ROLL WAS TAKEN. THERE WERE 12 YES 0 NO 1 ABSENT

REPRESENTATIVE DAMSCHEN WILL CARRY THE BILL.

CHAIRMAN NICHOLAS CLOSE THE HEARING ON 1472

HB 1472

Date: 2-4-05  
Roll Call Vote #:2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.House HOUSE AGRICULTURE COMMITTEE

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DO NOT PASS

Motion Made By

HEADLAND

Seconded By

BRANDENBURG

Representatives	Yes	No	Representatives	Yes	No
REP. EUGENE NICHOLAS CHAIRMAN	✓		REP. TRACY BOE	✓	
REP. JOYCE KINGSBURY VICE CHAIRMAN	✓		REP. ROD FROELICH	✓	
REP. WESLEY BELTER			REP. PHILLIP MUELLER	✓	
REP. M. BRANDENBURG	✓		REP. KENTON ONSTAD	✓	
REP. CHUCK DAMSCHEN	✓				
REP. CHAIG HEADLAND	✓				
REP. GARY KREIDT	✓				
REP. GERALD UGLEM	✓				
REP. JOHN WALL	✓				

Total (Yes) 12 No 0Absent 1Floor Assignment DAMSCHEN

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

mm



**REPORT OF STANDING COMMITTEE (410)**  
February 4, 2005 3:35 p.m.

**Module No: HR-23-1907**  
**Carrier: Damschen**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1472: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO NOT PASS**  
**(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1472 was placed on the**  
**Eleventh order on the calendar.**

2005 TESTIMONY

HB 1472

**House Agriculture Committee**  
**3<sup>rd</sup> February 2005**

Chairman Nicholas and members of the House Agriculture Committee, I am Scot Kelsh, State Representative from District 11 in Fargo. House Bill 1472 is a creative attempt to address some of the devastating flooding problems in the Red River Valley and to enhance and protect scenic and wildlife areas in the Missouri River Valley and along Lake Sakakawea and Lake Oahe.

HB 1472 adopts the Uniform Conservation Easements Act and amends and reenacts subsection 2 of section 47-05-02.1. The National Conference of Commissioners on Uniform State Laws developed the Uniform Conservation Easements Act. 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.

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 the Missouri River the right to donate or sell conservation easements, we are correcting this.

The floods in the Red River Valley were devastating. Establishing greenways and conservation space will prevent much heartache and disaster expense while building our economic base.

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Testimony of Tracy Potter in support of HB 1472

Chairman Nicholas and members of the House Agriculture Committee, my name is Tracy Potter. I am the executive director of the Fort Abraham Lincoln Foundation, an officer and registered lobbyist for the Tourism Alliance Partnership and the President of the Northern Plains Heritage Foundation. With all that, I'm really here only representing myself as a citizen of North Dakota.

Others can take you through the details of the bill. I'm only here to make a simple point. Preservation is good business.

Every analysis of North Dakota's tourism product comes to the same conclusion. We are blessed to have both natural scenic beauty and a rich cultural heritage. These are our twin attractions, the reasons that people will visit North Dakota and the stories they will tell about us after they leave.

For the long-term benefit of the state, it is crucial that we preserve the most important sites where visitors can find our natural vistas and the evidence of our ancestors. I'll give you a couple of concrete examples.

Just south of Mandan, between the city and Fort Lincoln State Park, there is an ancient Mandan Indian village site. It is known today as Motsiff. By the best information I can find the Mandans called it Young Man's Village. It was huge, and, as I said, ancient. In fact, families from Motsiff, from Scattered Village under the streets of the city of Mandan, and from the Boley village, now completely covered by a subdivision, were the pioneers who established On-a-Slant Village around 1575. If you would walk with me out into the field of what is left of Motsiff, I could show you shards of pottery, burned buffalo bone, the depressions of old earthlodges and firepits with no trouble at all.

If the current owners of Motsiff wished to preserve this site, a conservation easement would present them with the opportunity to preserve that land. In order to fully qualify for all the opportunities out there, that easement cannot be limited to 99 years. It must be perpetual.

Another similar situation is up north of Price, a site known as Molander. It was probably a Mandan village, perhaps even the village where Black Cat's people lived for some time after the village where Lewis and Clark visited them was abandoned. Molander itself is protected. It's a state historical site. But between the site, and the gravel road that runs by it, there is a small, privately-owned pasture, about ten acres in size. It should become part of the site. A conservation easement may be the most reasonable solution.

Again, I am no expert on this issue. I am merely here to say that preservation and conservation are not costs ... they are assets. Tourism is the fastest-growing sector of North Dakota's economy. Our natural beauty, and our historic character, are our greatest advantages in tourism. HB 1472 could help maintain that advantage.

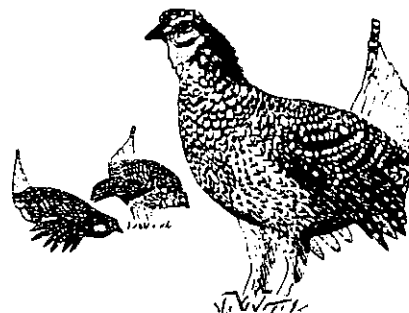
For Bill



North Dakota Chapter

## THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MIKE McENROE  
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY  
PRESENTED TO THE HOUSE AGRICULTURAL COMMITTEE  
ON HB 1472, FEBRUARY 3, 2005**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mike McEnroe speaking on behalf of the North Dakota Chapter of The Wildlife Society. The North Dakota Chapter supports HB 1472.

HB 1472 provides for perpetual conservation easements in areas along the Missouri and Red Rivers in North Dakota, in order to protect natural, scenic, and agricultural values of real property.

A recent Bismarck Tribune article (1/16/05) how ranchers in the Badlands of western North Dakota are having difficult times transferring or selling their ranches to their children because the developmental or recreational values of their land is up to ten times more than the assessed values. Having a conservation easement option available would provide an economic alternative to the State's agricultural landowners in order to keep ranch and agricultural lands in the family and in agricultural use.

The other 49 states all allow perpetual conservation easement programs. In some states like Colorado, agricultural entities such as the Colorado Cattlemen's Association, acquire conservation easements to protect ranch lands from urban development.

I have also attached editorials from the Grand Forks Herald and the Fargo Forum during the 2003 Legislative session enthusiastically supporting similar legislation.

The Chapter urges "Do Pass" consideration for HB 1472.

# The Forum

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## OUR OPINION

# Easement bill a plus for state

**N**orth Dakota legislators have an opportunity to enhance flood protection while strengthening private property rights.

Senate Bill 2283 would permit private landowners to voluntarily convey permanent easements to local governments and government agencies. The "permanent easement" provision is important because it provides the mechanism for property owners to take advantage of tax benefits and estate planning tools - options not available

under current easement laws, even long-term easements.

The legislation is specific to Red River and Missouri River corridors, where flooding and river bank erosion have been problems for generations. It has the support of the Red River Basin Commission, the North Dakota

Lewis & Clark Bicentennial Foundation, the North Dakota Natural Resources Trust, former lieutenant governor and legislator Rosemarie Myrdal and several local and state conservation, wildlife and water management organizations. In addition to enhancing private

**Today's issue:**  
*Legislation would enhance property rights of North Dakotans.*

**Our position:**  
*The full Senate should ignore a committee's do-not-pass recommendation.*

property rights, the bill:

► Provides tools to compensate landowners for river corridor lands prone to flooding or erosion, but useful as conservation habitat, parks, outdoor classrooms and green space.

► Provides an option for compensation for landowners who dedicate all or portions of their land to public values.

► Provides an ideal mechanism to assure voluntary long term land protection while keeping the land in private ownership and under private management.

► Provides a way for landowners to work with groups other than the federal government - such as farm land trusts, local subdivisions and nonprofit conservation organizations.

The legislation is not about the activities of the federal Fish and Wildlife Service, as the bill's opponents claim. It would have no effect on the service's ability to conduct its easement program, which has been in operation in North Dakota for decades.

One group, the so-called Landowners of North Dakota, opposes the legislation and has attempted to characterize the measure as a potential land grab. LAND defines itself as a defender of property rights, but opposes this sensible attempt to give landowners more control over their own property. LAND's real objection is that North Dakotans might want to use their property for purposes with which LAND disagrees, such as parks, floodways and wildlife habitats. LAND seems to favor landowner rights only when they conform to a rather constricted agenda.

SB 2283 (Fargo Sen. Tim Mathern is a prime sponsor) is excellent legislation. Similar mechanisms are in place in every state except North Dakota. But in a recent public opinion survey, 72 percent of North Dakotans said landowners should be able to choose how long an easement will last on their own property, from just a few years to forever. Sixty five percent said they should be able to sell easements that protect grasslands and wetlands without government approval.

The bill got a bipartisan do-not-pass recommendation Wednesday from the Senate Natural Resources Committee. The senators apparently were influenced by phone calls from an organized narrow special interest group. In effect, they thumbed their collective nose at an enhancement of private property rights for North Dakotans. (Fargo Sen. Tom Fischer is chairman.)

The full Senate should ignore the committee's wrong-headed recommendation should vote enthusiastically to pass the bill.

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Thursday, Feb 13, 2003

**Grand Forks  
Herald***Sen. Tim Mathern***Editorial**Select a day: **M** | **T** | **W** | **Th** | **F** | **S** | **Su**

Posted on Thu, Feb. 13, 2003

**Herald****EDITORIAL: Legislature should act to allow easements**

OUR VIEW: It's time for North Dakota to join the other 49 states in giving landowners the right to sign easements that protect their property.

The state Legislature has a chance to bring North Dakota into sync with the other 49 states while building its appeal to recreation-minded tourists and striking a blow for property rights.

To do all this, lawmakers must pass legislation ending North Dakota's one-of-a-kind ban on conservation easements.

The current law restricts property owners' rights to enter binding agreements to protect their land. That's a bad thing constitutionally.

The law also hampers the development of outdoor attractions in the state. That's a bad thing economically.

Two of these attractions are in the planning stages. They are the Red River Greenway and a trail system along the Missouri River. To facilitate development of these projects, state Sen. Tim Mathern, D-Fargo, has offered legislation that would exempt the counties bordering these rivers from the state's ban on conservation easements.

By rights - property rights and constitutional rights - the ban ought to be repealed all together. In order to facilitate development of nature-based tourism, the ban ought to be lifted, too. The bill under consideration - Senate Bill 2283 - is only a first step.

It would allow landowners in the counties abutting the Red and Missouri to sign perpetual easements. Only in this way can their rights as property owners be maintained and only in this way can development of the Greenway and trails systems be facilitated.

By now, it should be clear that such developments are critical to the state's future. Tourism already is the state's second-largest source of new money. The potential for growth is very large, since the state ranks dead last in attracting tourists now, even though it has wide open spaces with spectacular vistas and much-sought-after birds, animals and plants.

What's more, the leading industry, agriculture, is in increasing trouble. The state's emphasis on production agriculture at the expense of other economic activity has built an economy of dependence on federal subsidies. As globalization proceeds, the challenges facing agriculture will only grow.

North Dakota needs to position itself for the developing economy rather than continuing to resist it. Travel is part of the American lifestyle, and more and more Americans are looking for outdoor destinations. North Dakota offers some of the best opportunities in the nation, especially if the Greenway and trails corridors can be established.

But that effort is doomed without legislation that enables private and public bodies to acquire easements.

Every other state permits this.

Here's another example of North Dakota particularism that holds the state back. The Legislature should get rid of the ban on easements, restore the right to protect land to landowners and help build the state's future as a place that welcomes travelers who want the outdoor experiences North Dakota can provide them.

Passing Mathern's bill is a good first step.



Jessica Delorme- North Dakota Sierra Club

This bill would provide many benefits for conservation and wildlife purposes along with the benefits that could be utilized by landowners, such as keeping their land for agricultural use. There are many organizations in other states that have used easements to benefit everyone. Take, for example, the Colorado Cattlemen's Agricultural Land Trust (Est. 1995) or the Montana Agricultural Heritage Commission. Many ranchers have been able to keep their lands for agricultural use or were able to pass the land down to their children only because of conservation easements.

The Sierra Club certainly sees not only these agricultural benefits, but also the benefit to wildlife. There is a great deal of wildlife present on the Missouri River in North Dakota. Many of these animals have had habitat greatly diminished by development between the cities of Washburn and Bismarck. Easements would help keep more areas of the river in a natural state, which would greatly benefit many of the animals that live along its banks and sandbars.

This bill would provide a win-win solution for landowners as well as wildlife. While development along the river is inevitable, some areas need to be left for agricultural use as well as for wildlife purposes. With conservation easements, landowners are able to use their land as they always have, such as for

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agriculture and hunting, and to complement that agricultural land is certainly easier on wildlife than housing developments.

For these reasons, I would urge a do pass recommendation for House Bill 1472.

Groups in other states who have benefited from the use of conservation easements:

Montana Agricultural Heritage Commission

<http://www.dnrc.state.mt.us/cadd/agheritage.htm>

Colorado Cattlemen's Agricultural Land Trust

<http://cca.beef.org/pages/ccalt-home.htm>