

**SENATE BILL NO. 2264**

Introduced by

Senator St. Aubyn

Representative Dalrymple

1 A BILL for an Act to amend and reenact sections 55-02-07 and 55-10-08 of the North Dakota  
2 Century Code, relating to the authority of the state historical board and superintendent of the  
3 state historical board to prohibit the alteration or demolition of historic sites.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 55-02-07 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **55-02-07. Protection of prehistoric or historic artifacts or sites.** ~~Any~~ A historical or  
8 archaeological artifact or site that is found or located upon any land owned by the state of North  
9 Dakota or its political subdivisions or otherwise comes into its custody or possession and which  
10 is, in the opinion of the superintendent, significant in understanding and interpreting the history  
11 and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise  
12 disposed of in any manner without ~~the approval~~ first notifying the superintendent of the state  
13 historical board. Notification of the superintendent's opinion of significance must be  
14 communicated to the appropriate governing official. The state historical board through the  
15 superintendent shall, within sixty days of written notification to it by the appropriate governing  
16 official of the state or political subdivision's desire, need, or intent to destroy, alter, remove, or  
17 otherwise dispose of a significant artifact or site, provide ~~said~~ the governing official written  
18 direction for the care, protection, excavation, storage, destruction, or other disposition of ~~said~~  
19 the significant artifact or site. It is the responsibility of the state and its political subdivisions to  
20 cooperate with the state historical board in identifying and implementing any reasonable  
21 alternative to destruction or alteration of ~~any~~ a historical or archaeological artifact or site  
22 significant in understanding and interpreting the history and prehistory of the state ~~before.~~  
23 However, the state historical board ~~shall approve such~~ may not prohibit the demolition or  
24 alteration of any artifact or site.

1           **SECTION 2. AMENDMENT.** Section 55-10-08 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **55-10-08. Duties of the state and governmental subdivisions in regard to state**  
4 **historic sites - Historic easements –~~Prohibitions.~~**

- 5           1. The state, its departments and agencies, each city, county, school district, and  
6 other body corporate and politic, are by this chapter notified of the existence of  
7 state historic sites on land and water areas in North Dakota listed in the state  
8 historic sites registry, as defined in subsection 4 of section 55-10-02.
- 9           2. ~~Neither the The state nor~~ or any of the instrumentalities of government enumerated  
10 in subsection 1 may not demolish or cause to alter the physical features or historic  
11 character of any site listed in the state historic sites registry, defined in  
12 subsection 4 of section 55-10-02, as a state historic site without first ~~obtaining the~~  
13 ~~prior approval thereof from~~ notifying the superintendent of the state historical board  
14 ~~upon authorization of the state historical board.~~ It is the responsibility of the state  
15 or instrumentalities of government enumerated in subsection 1 to cooperate with  
16 the state historical board in identifying and implementing any reasonable  
17 alternative to demolition or alteration of any state historic site ~~before.~~ However, the  
18 ~~board approves such~~ may not prohibit the demolition or alteration of a state historic  
19 site by the state or any of the instrumentalities of government enumerated in  
20 subsection 1.
- 21           3. The state or any of the instrumentalities of government enumerated in subsection 1  
22 may acquire fee title to a state historic site, or property listed in the national register  
23 of historic places, or may acquire a historic easement with respect to a privately  
24 owned state historic site, or property listed in the national register of historic places,  
25 and buildings and structures thereon when restored, reconstructed, or improved in  
26 accordance with plans approved by the superintendent of the state historical board.  
27 A historic easement is:
- 28           a. A nonpossessory interest in the real property, imposing limitations or  
29 affirmative obligations the purposes of which include preserving the historic  
30 aspects of the property as so restored, reconstructed, or improved;

- 1           b. Created and capable of being conveyed, recorded, assigned, released,  
2           modified, terminated, or otherwise altered or affected in the same manner as  
3           other easements, except as otherwise provided in this subsection; provided,  
4           that no right or duty in favor of or against a holder or another party having a  
5           right of enforcement arises under a historic easement before it is accepted by  
6           the holder and the acceptance is recorded;
- 7           c. Held by the grantee for the benefit of its citizens and the people of the state  
8           generally;
- 9           d. Specifically enforceable by the grantee or, if so provided by the grant, by the  
10          state or another instrumentality of government enumerated in subsection 1;
- 11          e. Binding upon the holder of the servient tenement and ~~his~~ that person's  
12          successors and assigns;
- 13          f. Limited to a term of years provided in the grant and approved by the  
14          superintendent of the state historical board, not exceeding the estimated  
15          useful life of the real property as restored, reconstructed, or improved, and not  
16          less than the term of any loan made by the holder to finance in whole or in  
17          part the cost of the restoration, reconstruction, or improvement;
- 18          g. Subject to no other legal limitation upon the duration of estates or of restraint  
19          on the alienation thereof, except the limitation contained in section  
20          47-05-02.1; and
- 21          h. Subordinate to any interest existing when the easement is created, in the real  
22          property affected thereby, unless the owner of the interest is the grantor of the  
23          easement or consents to it.
- 24      4. A historic easement is valid even though:
- 25          a. It is not appurtenant to an interest in real property;
- 26          b. It can be or has been assigned to another holder;
- 27          c. It is not of a character that has been recognized traditionally at common law;
- 28          d. It imposes a negative burden;
- 29          e. It imposes affirmative obligations upon the owner of an interest in the  
30          burdened property or upon the holder;
- 31          f. The benefit does not touch or concern real property; or

- 1           g. There is no privity of estate or of contract.
- 2           5. A project comprising the acquisition of a state historic site or of a historic easement  
3           with reference thereto, and the restoration, reconstruction, and improvement of the  
4           site and buildings and structures thereon to preserve physical characteristics of  
5           historic importance, is declared to be a proper and necessary purpose for the  
6           expenditure of public funds. The proceeds of tax increments or bonds or both may  
7           be expended by a city for such a project within an urban renewal area, when  
8           determined by the governing body to be desirable for the redevelopment,  
9           rehabilitation, and conservation of the area in accordance with the provisions of  
10          chapter 40-58.
- 11          ~~6. If a city, county, school district, or other political subdivision objects to any decision  
12          of the state historical board to disallow alteration or demolition of a site listed on the  
13          state historical sites registry, such political subdivision may submit the objection to  
14          arbitration as provided in this subsection. Arbitration may also be demanded by  
15          either the board or such political subdivision if the board or the political subdivision  
16          determines that the other has failed to cooperate in identifying or implementing  
17          reasonable alternatives to demolition or alteration. The party desiring arbitration  
18          shall make a written demand therefor of the other and in such demand shall name  
19          three arbitrators. The demand must also set forth the objections which the party  
20          desires to submit to arbitration, with reference to the particular state historic site.  
21          Such demand must be served upon the other party, which, within ten days, shall  
22          name in writing three arbitrators, and in connection therewith shall set forth in  
23          writing its response to the objections set forth in the demand served upon it and  
24          any additional objections which it desires to submit to arbitration on its part. The  
25          six arbitrators so selected shall name a seventh arbitrator. If the party proceeded  
26          against fails or refuses to name three arbitrators, the moving party may apply ex  
27          parte to the judge of the district court of the county in which the state historical site  
28          in question, or any part thereof, may be located, for the appointment of the  
29          unnamed arbitrators, and if upon the appointment of three arbitrators by each of  
30          the parties, the six so appointed have been unable to agree upon a seventh  
31          arbitrator within five days, then either party, upon five days' notice may apply to~~

1            ~~such district court for the appointment of such seventh arbitrator. The political~~  
2            ~~subdivision may select its arbitrators from among the governing board of the~~  
3            ~~affected political subdivision, from any regular or special committee appointed by~~  
4            ~~the governing board, whether serving on such governing board or not, or from any~~  
5            ~~combination thereof. The state historical board may select its arbitrators from~~  
6            ~~among the board itself, from an executive committee of the board, or from any~~  
7            ~~combination thereof. When a panel of arbitrators has been appointed, a~~  
8            ~~submission in writing must be acknowledged by the parties thereto in the same~~  
9            ~~manner as a conveyance of real property and may fix the time on or before which~~  
10           ~~the award must be made. The submission must provide for the entry of judgment~~  
11           ~~upon the award by the district court of the county within which the state historical~~  
12           ~~site or some part thereof is located. The submission must also provide that each~~  
13           ~~party shall bear its own arbitration costs and expenses, however the costs and~~  
14           ~~expenses relating to the seventh arbitrator must be borne equally by both parties to~~  
15           ~~the dispute. The seven arbitrators shall proceed to resolve the controversies~~  
16           ~~brought before them, and the decision of the arbitrators, or a majority of them, must~~  
17           ~~be given in writing to the board or the officials concerned and is binding upon both~~  
18           ~~parties. Thereafter, the arbitration must proceed in accordance with the provisions~~  
19           ~~of chapter 32-29.1.~~