

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2264**

Introduced by

Senator St. Aubyn

Representative Dalrymple

1 A BILL for an Act to amend and reenact section 55-10-08 of the North Dakota Century Code,  
2 relating to the authority of the state historical board and superintendent of the state historical  
3 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 55-10-08 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **55-10-08. Duties of the state and governmental subdivisions in regard to state**  
8 **historic sites - Historic easements - Prohibitions.**

- 9 1. The state, its departments and agencies, each city, county, school district, and  
10 other body corporate and politic, are by this chapter notified of the existence of  
11 state historic sites on land and water areas in North Dakota listed in the state  
12 historic sites registry, as defined in subsection 4 of section 55-10-02.
- 13 2. ~~Neither the~~ The state ~~nor~~ or any of the instrumentalities of government  
14 enumerated in subsection 1 may not demolish or cause to alter the physical  
15 features or historic character of any site listed in the state historic sites registry,  
16 defined in subsection 4 of section 55-10-02, as a state historic site without first  
17 obtaining the prior approval thereof from the superintendent of the state historical  
18 board upon authorization of the state historical board. It is the responsibility of the  
19 state or instrumentalities of government enumerated in subsection 1 to cooperate  
20 with the state historical board in identifying and implementing any reasonable  
21 alternative to demolition or alteration of any state historic site before the board  
22 approves such demolition or alteration.
- 23 3. The state or any of the instrumentalities of government enumerated in  
24 subsection 1 may acquire fee title to a state historic site, or property listed in the

- 1 national register of historic places, or may acquire a historic easement with respect  
2 to a privately owned state historic site, or property listed in the national register of  
3 historic places, and buildings and structures thereon when restored, reconstructed,  
4 or improved in accordance with plans approved by the superintendent of the state  
5 historical board. A historic easement is:
- 6 a. A nonpossessory interest in the real property, imposing limitations or  
7 affirmative obligations the purposes of which include preserving the historic  
8 aspects of the property as so restored, reconstructed, or improved;
  - 9 b. Created and capable of being conveyed, recorded, assigned, released,  
10 modified, terminated, or otherwise altered or affected in the same manner as  
11 other easements, except as otherwise provided in this subsection; provided,  
12 that no right or duty in favor of or against a holder or another party having a  
13 right of enforcement arises under a historic easement before it is accepted by  
14 the holder and the acceptance is recorded;
  - 15 c. Held by the grantee for the benefit of its citizens and the people of the state  
16 generally;
  - 17 d. Specifically enforceable by the grantee or, if so provided by the grant, by the  
18 state or another instrumentality of government enumerated in subsection 1;
  - 19 e. Binding upon the holder of the servient tenement and ~~his~~ that person's  
20 successors and assigns;
  - 21 f. Limited to a term of years provided in the grant and approved by the  
22 superintendent of the state historical board, not exceeding the estimated  
23 useful life of the real property as restored, reconstructed, or improved, and  
24 not less than the term of any loan made by the holder to finance in whole or in  
25 part the cost of the restoration, reconstruction, or improvement;
  - 26 g. Subject to no other legal limitation upon the duration of estates or of restraint  
27 on the alienation thereof, except the limitation contained in section  
28 47-05-02.1; and
  - 29 h. Subordinate to any interest existing when the easement is created, in the real  
30 property affected thereby, unless the owner of the interest is the grantor of the  
31 easement or consents to it.

- 1           4. A historic easement is valid even though:
- 2           a. It is not appurtenant to an interest in real property;
- 3           b. It can be or has been assigned to another holder;
- 4           c. It is not of a character that has been recognized traditionally at common law;
- 5           d. It imposes a negative burden;
- 6           e. It imposes affirmative obligations upon the owner of an interest in the
- 7           burdened property or upon the holder;
- 8           f. The benefit does not touch or concern real property; or
- 9           g. There is no privity of estate or of contract.
- 10          5. A project comprising the acquisition of a state historic site or of a historic easement
- 11          with reference thereto, and the restoration, reconstruction, and improvement of the
- 12          site and buildings and structures thereon to preserve physical characteristics of
- 13          historic importance, is declared to be a proper and necessary purpose for the
- 14          expenditure of public funds. The proceeds of tax increments or bonds or both may
- 15          be expended by a city for such a project within an urban renewal area, when
- 16          determined by the governing body to be desirable for the redevelopment,
- 17          rehabilitation, and conservation of the area in accordance with the provisions of
- 18          chapter 40-58.
- 19          6. If any state agency or department or a city, county, school district, or other political
- 20          subdivision objects to any decision of the state historical board to disallow
- 21          alteration or demolition of a site listed on the state historical sites registry, ~~such~~
- 22          ~~political subdivision~~ the objecting party may submit the objection to arbitration as
- 23          provided in this subsection. Arbitration may also be demanded by either the board
- 24          or ~~such political subdivision~~ the objecting party if the board or the ~~political~~
- 25          ~~subdivision~~ objecting party determines that the other has failed to cooperate in
- 26          identifying or implementing reasonable alternatives to demolition or alteration. The
- 27          party desiring arbitration shall make a written demand therefor of the other and in
- 28          such demand shall name three arbitrators. The demand must also set forth the
- 29          objections which the party desires to submit to arbitration, with reference to the
- 30          particular state historic site. ~~Such~~ The demand must be made within ninety days
- 31          of a decision by the board. The demand must be served upon the other party,

1           which, within ten days, shall name in writing three arbitrators, and in connection  
2           therewith shall set forth in writing its response to the objections set forth in the  
3           demand served upon it and any additional objections which it desires to submit to  
4           arbitration on its part. The six arbitrators so selected shall name a seventh  
5           arbitrator. If the party proceeded against fails or refuses to name three arbitrators,  
6           the moving party may apply ex parte to the judge of the district court of the county  
7           in which the state historical site in question, or any part thereof, may be located, for  
8           the appointment of the unnamed arbitrators, and if upon the appointment of three  
9           arbitrators by each of the parties, the six so appointed have been unable to agree  
10          upon a seventh arbitrator within five days, then either party, upon five days' notice  
11          may apply to ~~such~~ the district court for the appointment of ~~such~~ the seventh  
12          arbitrator. The political subdivision may select its arbitrators from among the  
13          governing board of the affected political subdivision, from any regular or special  
14          committee appointed by the governing board, whether serving on such governing  
15          board or not, or from any combination thereof. A state agency may select its  
16          arbitrators from its officers or employees. The state historical board may select its  
17          arbitrators from among the board itself, from an executive committee of the board,  
18          or from any combination thereof. When a panel of arbitrators has been appointed,  
19          a submission in writing must be acknowledged by the parties thereto in the same  
20          manner as a conveyance of real property and may fix the time on or before which  
21          the award must be made. The submission must provide for the entry of judgment  
22          upon the award by the district court of the county within which the state historical  
23          site or some part thereof is located. The submission must also provide that each  
24          party shall bear its own arbitration costs and expenses, however the costs and  
25          expenses relating to the seventh arbitrator must be borne equally by both parties  
26          to the dispute. The seven arbitrators shall proceed to resolve the controversies  
27          brought before them, and the decision of the arbitrators, or a majority of them,  
28          must be given in writing to the ~~board or the officials~~ parties concerned and is  
29          binding upon both parties. Thereafter, the arbitration must proceed in accordance  
30          with the provisions of chapter ~~32-29.1~~ 32-29.2.