

SENATE BILL NO. 2168

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new chapter to title 6, a new section to chapter 50-24.4,
2 and a new chapter to title 50 of the North Dakota Century Code, relating to a funding pool to
3 establish the North Dakota health care trust fund to make grants and loans to support
4 development of adult residential care facilities, assisted living facilities, and other alternatives to
5 nursing facility care; to repeal chapter 50-21 of the North Dakota Century Code, relating to the
6 administration of a revolving fund for nursing homes and homes for aged; to provide continuing
7 appropriations to make funding pool payments and disbursements from the North Dakota health
8 care trust fund; to declare a retroactive application; and to declare an emergency.

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

10 **SECTION 1.** A new chapter to title 6 of the North Dakota Century Code is created and
11 enacted as follows:

12 **Definitions.** Terms defined in section 3 of this Act have the same meaning when used
13 in this chapter.

14 **Revolving loan fund - Appropriation.** A revolving loan fund must be maintained in the
15 Bank of North Dakota for the purpose of making loans to nursing facilities, adult residential care
16 facilities, assisted living facilities, or other entities providing alternatives to nursing facility care,
17 to encourage and support conversion of nursing facilities. All moneys transferred into the fund,
18 interest upon moneys in the fund, and collections of interest and principal on loans made from
19 the fund are hereby appropriated for disbursement pursuant to the requirements of this chapter.

20 **Nursing facility alternative loan fund.**

21 1. There is hereby created a nursing facility alternative loan fund. The fund shall
22 include revenue transferred from the North Dakota health care trust fund, interest
23 upon moneys in the fund, and collections of interest and principal on loans made
24 from the fund.

- 1 2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund
2 may be used for:
- 3 a. Loans as provided in this chapter and as approved by the department under
4 section 3 of this Act;
- 5 b. The costs of administration of the fund; and
- 6 c. Repayment of federal funds if the United States department of health and
7 human services determines that funds were inappropriately claimed under
8 section 2 of this Act.
- 9 3. Any money in the fund not required for use under subsection 2 must be transferred
10 to the North Dakota health care trust fund.

11 **Loan application - How made.** All applications for loans under this chapter must be
12 made to the department. The department may approve the applications of qualified applicants
13 who propose projects that conform to requirements established under section 3 of this Act.
14 Applications approved by the department must be forwarded to the Bank of North Dakota.
15 Upon approval of the application by the Bank of North Dakota, loans may be made from the
16 revolving loan fund in accordance with the provisions of this chapter.

17 **Amount of loans - Terms and conditions.** Loans in an amount not exceeding eighty
18 percent of project costs may be made by the Bank of North Dakota from the fund maintained
19 pursuant to this chapter. Such loans must bear interest at a rate determined by the Bank of
20 North Dakota to be two percentage points less than the market rate for similar commercial
21 loans, provided that no loan may bear interest at a rate less than one half of one percent, or
22 more than seven percent, of the outstanding principal balance of the loan. In consideration of
23 the making of a loan under this chapter, each borrower shall execute a contract with the
24 department to operate the project in accordance with standards established under section 3 of
25 this Act. The contract must also provide that if the use of the project is discontinued or diverted
26 to purposes other than those provided in the loan application without written consent of the
27 department, the full amount of the loan provided under this chapter immediately becomes due
28 and payable. The Bank of North Dakota may annually deduct, as a service fee for
29 administering the revolving fund maintained under this chapter, one half of one percent of the
30 principal balance of the outstanding loans from the revolving fund.

1 **Powers of Bank of North Dakota.** The Bank of North Dakota may do all acts or things
2 necessary to negotiate loans and preserve security under this chapter, including the power to
3 take such security as deemed necessary, to exercise any right of redemption, and to bring suit
4 in order to collect interest and principal due the revolving fund under mortgages, contracts, and
5 notes executed to obtain loans under the provisions of this chapter. If the applicant's plan for
6 financing provides for a loan of funds from sources other than the state of North Dakota, the
7 Bank of North Dakota may take a subordinate security interest. The bank may recover from the
8 revolving loan fund amounts actually expended by it for legal fees and to effect a redemption.

9 **SECTION 2.** A new section to chapter 50-24.4 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Government nursing facility funding pool - Appropriations.**

- 12 1. For purposes of this section:
- 13 a. "Fiscal period" means the period beginning July first of each year and ending
14 June thirtieth of the next year; and
- 15 b. "Governmental nursing facility" means any nursing home administered by any
16 political subdivision of this state for which a rate is set under this chapter.
- 17 2. The department shall establish a pool consisting of an amount annually calculated
18 by multiplying the total of all resident days of all nursing homes during the fiscal
19 period during which a resident was eligible for and received benefits under chapter
20 50-24.1 times an amount that does not exceed the amount that can reasonably be
21 estimated to be paid under payment principles established under title XVIII of the
22 Social Security Act [42 U.S.C. 1395, et seq.], reduced by the payment rates set for
23 each such resident, for each such day, during the fiscal period.
- 24 3. In addition to any payment made pursuant to a rate set under this chapter, and
25 notwithstanding any other provision of this chapter, the department shall pay to
26 each governmental nursing facility an amount determined by:
- 27 a. Dividing that facility's total inpatient days for the fiscal period by the total
28 inpatient days of all governmental nursing facilities for the fiscal period; and
- 29 b. Multiplying a decimal fraction determined under subdivision a times the pool
30 amount determined under subsection 2.

- 1 4. Each governmental nursing facility, immediately upon receiving a payment under
2 subsection 3, shall remit the amount of that payment, less a ten thousand dollar
3 transaction fee, to the department for remittance to the state treasurer for credit to:
- 4 a. The North Dakota health care trust fund in an amount equal to the federal
5 medical assistance percentage for the fiscal period times the total remittance
6 to the state treasurer, less ten thousand dollars; and
- 7 b. The general fund all all remaining amounts.
- 8 5. Notwithstanding any other provision of this code, or of any ordinance or code
9 governing the operation of a governmental nursing facility, a governmental nursing
10 facility is authorized to receive and, upon receipt, required to remit payments
11 provided under this section.
- 12 6. No payment is required under this section for any period in which the funds
13 otherwise appropriated under subdivision b of subsection 7 are unavailable due to
14 action by the secretary of the United States department of health and human
15 services.
- 16 7. There is hereby appropriated to the department of human services, as a standing
17 and continuing appropriation for the purpose of making the payments described in
18 subsection 3, the pool amount annually determined under subsection 2, as follows:
- 19 a. From special funds derived from federal funds and other income, the pool
20 amount determined under subsection 2 reduced by the amount determined
21 under subdivision b; and
- 22 b. From general funds, the "state percentage" as that term is used in defining the
23 term "federal medical assistance percentage" for purposes of title XIX of the
24 Social Security Act [42 U.S.C. 1396, et seq.], for each calendar quarter in
25 each fiscal period.

26 **SECTION 3.** A new chapter to title 50 of the North Dakota Century Code is created and
27 enacted as follows:

28 **Definitions.** For purposes of this chapter:

- 29 1. "Adult residential care facility" has the meaning provided in section 50-24.4-01, and
30 if the term is not defined in that section, means a facility that:

- 1 a. Makes staff available onsite at all times to respond to residents' scheduled
- 2 and unpredicted needs;
- 3 b. Provides room and board;
- 4 c. Assures provision of:
 - 5 (1) Personal care, therapeutic care, and social and recreational
 - 6 programming;
 - 7 (2) Supervision, safety, and security;
 - 8 (3) Medication services; and
 - 9 (4) Transportation services;
- 10 d. Fosters dignity, respect, and independence by allowing, to the maximum
- 11 extent feasible, each resident to determine the resident's qualified service
- 12 providers, routines of care provision, and service delivery; and
- 13 e. Serves five or more adult residents, unrelated to the proprietor, on a specified
- 14 premises not licensed under chapter 25-16, which:
 - 15 (1) If on initial occupancy, meets the requirements of chapter 22 of the
 - 16 national fire protection association 101 life safety code; or
 - 17 (2) If on occupancy of an existing premises previously occupied for other
 - 18 purposes, meets the requirements of chapter 23 of the national fire
 - 19 protection association 101 life safety code.
- 20 2. "Alternative to nursing facility care" means services described in the home and
- 21 community-based services waiver for aged persons under medical assistance.
- 22 3. "Assisted living" means an environment where a person lives in an apartment-like
- 23 unit and receives services on a twenty-four-hour basis to accommodate that
- 24 person's needs and abilities to maintain as much independence as possible.
- 25 4. "Conversion" means:
 - 26 a. The remodeling of existing space and, if necessary, the construction of
 - 27 additional space required to accommodate adult residential care facility
 - 28 services, assisted living facility services, or other alternatives to nursing
 - 29 facility care; or
 - 30 b. New construction of an adult residential care facility, assisted living facility, or
 - 31 other alternative to nursing facility care if existing nursing facility beds are no

1 longer licensed and the department determines that new construction is more
2 cost effective than the conversion of existing space.

3 5. "Department" means the department of human services.

4 6. "Medical assistance" means a program established under title XIX of the Social
5 Security Act [42 U.S.C. 1396, et seq.] and chapter 50-24.1.

6 7. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the
7 term "nursing home".

8 **North Dakota health care trust fund created - Appropriation.** There is hereby
9 created in the state treasury a special fund known as the North Dakota health care trust fund.
10 The fund shall include revenue received from governmental nursing facilities for remittance to
11 the fund under section 2 of this Act. The department shall administer the fund and shall adopt
12 procedures for participation by governmental nursing facilities. All moneys designated for the
13 fund from whatever source derived must be deposited with the state treasurer in the North
14 Dakota health care trust fund. The state treasurer shall invest such funds in interest-bearing
15 accounts, as designated by the department, and the interest earned must be deposited in the
16 North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust
17 fund are appropriated to the department for disbursement pursuant to the requirements of this
18 chapter.

19 **Nursing facility alternative grant fund.**

20 1. There is hereby created a nursing facility alternative grant fund. The fund shall
21 include revenue transferred from the North Dakota health care trust fund.

22 2. The department shall administer the distribution of funds in the nursing facility
23 alternative grant fund. The nursing facility alternative grant fund may be used for:

24 a. Grants, as provided in this chapter;

25 b. The costs of administration of the grants; and

26 c. Repayment of federal funds if the United States department of health and
27 human services determines that funds were inappropriately claimed under
28 section 2 of this Act.

29 3. Any money in the fund not required for use under subsection 2 must be transferred
30 to the North Dakota health care trust fund.

31 **Department to award grants or make loan guarantees.**

- 1 1. The department may award grants from the nursing facility alternative grant fund or
2 approve loans from the nursing facility alternative loan fund established under
3 section 1 of this Act for capital or one-time expenditures, including startup and
4 training expenses and operating losses for the first year:
 - 5 a. To any nursing facility which has been approved for at least three years as a
6 provider under the medical assistance program to convert all or a portion of
7 the facility licensed to provide such care to an adult residential care facility,
8 assisted living facility, or other alternative to nursing facility care; or
 - 9 b. To any other entity meeting conditions established by the department to
10 develop an adult residential care facility, assisted living facility, or other
11 alternative to nursing facility care.
- 12 2. A nursing facility or other entity may be eligible for a grant or loan only if the adult
13 residential care facility, assisted living facility, or other alternative to nursing facility
14 care is located in an underserved area as determined by the department.
- 15 3. To be eligible for a grant or loan under this section, the nursing facility or other
16 entity approved by the department shall provide at least twenty percent of the total
17 cost of any conversion. The department shall establish policies and procedures for
18 certification of the required matching funds.
- 19 4. The department shall annually establish a calendar for receiving and evaluating
20 proposals and awarding grants or approving loans.
- 21 5. No grant or loan application may be approved by the department unless the
22 applicant can demonstrate that:
 - 23 a. Conversion of the nursing facility or portion of the facility to an adult residential
24 care facility, assisted living facility, or other alternative to nursing facility care
25 may offer efficient and economical care to individuals requiring long-term care
26 services in the area;
 - 27 b. Adult residential care, assisted living services, or other alternatives to nursing
28 facility care are unlikely to be available in the area for individuals eligible for
29 services under the medical assistance program; and

- 1 c. The resulting reduction in the availability of nursing facility service is not
2 expected to cause undue hardship on those individuals requiring nursing
3 facility services.
- 4 6. No grant may be awarded or loan approved unless the applicant agrees:
- 5 a. To maintain a minimum occupancy rate by individuals eligible for
6 supplemental security income benefits provided under title XVI of the Social
7 Security Act [42 U.S.C. 1382, et seq.]; and
- 8 b. To refund to the nursing facility alternative grant fund or the nursing facility
9 alternative loan fund, on an amortized basis, the amount of the grant or loan if
10 the applicant or its successor in interest ceases to operate an adult residential
11 care facility, assisted living facility, or other alternative to nursing facility care
12 during the ten-year period after the date the applicant began operation of its
13 facility as an adult residential care facility, assisted living facility, or other
14 alternative to nursing facility care ceases to maintain the agreed minimum
15 occupancy rate or fails to commence operations within a reasonable time.
- 16 7. In addition to other remedies provided by law or contract, the department may
17 deduct the amount of any refund due from a recipient of grant or loan guarantee
18 funds from any money owed by the department to such recipient or the recipient's
19 successor in interest.

20 **Department to adopt rules.**

- 21 1. The department shall adopt rules that establish:
- 22 a. An application process for grants or loans;
- 23 b. Criteria, that need not be the same for grants as for loans, for nursing facilities
24 and other entities to receive funding, including minimum occupancy rates,
25 allowable costs, and refund methods;
- 26 c. Criteria for the rates and amounts of funding; and
- 27 d. Other procedures as the department deems necessary for the proper
28 administration of this chapter.
- 29 2. Rules adopted under this chapter may be adopted as interim final rules without a
30 finding that emergency rulemaking is necessary, and any interim final rules so

1 adopted may take effect on a date no earlier than the date of first filing with the
2 legislative council of the notice of proposed adoption of a rule.

3 **Chapter does not create entitlement.** This chapter does not create an entitlement to
4 any funds available for grants or loans. The department may award grants or approve loans to
5 the extent funds are available and, within its discretion, to the extent such applications are
6 approved.

7 **Annual cost reports.** Recipients of grants and loans under this chapter shall annually
8 submit cost reports to the department regarding the conversion project for a period of ten years
9 after the date the recipient began operation of its facility as an adult residential care facility, an
10 assisted living facility, or other alternative to nursing facility care. The department shall develop
11 the cost report which must include revenue, costs, loans undertaken by the facility, fixed assets
12 of the facility, a balance sheet, and a profit and loss statement.

13 **Annual reports by the department.** The department shall provide reports to the
14 governor and the legislative council on or before August thirty-first of each year after the
15 effective date of this Act, concerning grants awarded or loans approved under this chapter
16 through June thirtieth of that year. Each report must include the number of applicants and
17 approved applicants, an overview of the grants awarded or loans approved, and reports of the
18 cost of each project funded by a grant or loan and annual cost reports received from recipients
19 of grants or loans under this chapter.

20 **SECTION 4. LEGISLATIVE INTENT - ADMINISTRATIVE STAFF.** It is the intent of the
21 legislative assembly that two full-time equivalent administrative staff positions shall be added to
22 the positions authorized by the fifty-sixth legislative assembly for the department of human
23 services for the biennium beginning July 1, 1999, and ending June 30, 2001, for carrying out
24 the purposes of this Act.

25 **SECTION 5. REPEAL.** Chapter 50-21 of the North Dakota Century Code is repealed.

26 **SECTION 6. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in
27 application.

28 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.