

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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
8 health care trust fund; to declare a retroactive application; to provide an appropriation; and to
9 declare an emergency.

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

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

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

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

22 **Nursing facility alternative loan fund.**

23 1. There is hereby created a nursing facility alternative loan fund. The fund shall
24 include revenue transferred from the North Dakota health care trust fund, interest

1 upon moneys in the fund, and collections of interest and principal on loans made
2 from the fund.

3 2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund
4 may be used for:

5 a. Loans as provided in this chapter and as approved by the department under
6 section 3 of this Act;

7 b. The costs of administration of the fund; and

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

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

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

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

1 administering the revolving fund maintained under this chapter, one half of one percent of the
2 principal balance of the outstanding loans from the revolving fund.

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

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

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

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

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

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

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

- 1 1. "Adult residential care facility" has the meaning provided in section 50-24.4-01,
2 and if the term is not defined in that section, means a facility that:
- 3 a. Makes staff available onsite at all times to respond to residents' scheduled
4 and unpredicted needs;
- 5 b. Provides room and board;
- 6 c. Assures provision of:
- 7 (1) Personal care, therapeutic care, and social and recreational
8 programming;
- 9 (2) Supervision, safety, and security;
- 10 (3) Medication services; and
- 11 (4) Transportation services;
- 12 d. Fosters dignity, respect, and independence by allowing, to the maximum
13 extent feasible, each resident to determine the resident's qualified service
14 providers, routines of care provision, and service delivery; and
- 15 e. Serves five or more adult residents, unrelated to the proprietor, on a specified
16 premises not licensed under chapter 25-16, which:
- 17 (1) If on initial occupancy, meets the requirements of chapter 22 of the
18 national fire protection association 101 life safety code; or
- 19 (2) If on occupancy of an existing premises previously occupied for other
20 purposes, meets the requirements of chapter 23 of the national fire
21 protection association 101 life safety code.
- 22 2. "Alternative to nursing facility care" means services described in the home and
23 community-based services waiver for aged persons under medical assistance.
- 24 3. "Assisted living" means an environment where a person lives in an apartment-like
25 unit and receives services on a twenty-four-hour basis to accommodate that
26 person's needs and abilities to maintain as much independence as possible.
- 27 4. "Conversion" means:
- 28 a. The remodeling of existing space and, if necessary, the construction of
29 additional space required to accommodate adult residential care facility
30 services, assisted living facility services, or other alternatives to nursing
31 facility care; or

1 b. New construction of an adult residential care facility, assisted living facility, or
2 other alternative to nursing facility care if existing nursing facility beds are no
3 longer licensed and the department determines that new construction is more
4 cost effective than the conversion of existing space.

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

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

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

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

21 **Nursing facility alternative grant fund.**

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

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

26 a. Grants, as provided in this chapter;

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

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

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

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

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

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

23 **Department to adopt rules.**

- 24 1. The department shall adopt rules that establish:
- 25 a. An application process for grants or loans;
- 26 b. Criteria, that need not be the same for grants as for loans, for nursing facilities
27 and other entities to receive funding, including minimum occupancy rates,
28 allowable costs, and refund methods;
- 29 c. Criteria for the rates and amounts of funding; and
- 30 d. Other procedures as the department deems necessary for the proper
31 administration of this chapter.

1 2. Rules adopted under this chapter may be adopted as interim final rules without a
2 finding that emergency rulemaking is necessary, and any interim final rules so
3 adopted may take effect on a date no earlier than the date of first filing with the
4 legislative council of the notice of proposed adoption of a rule.

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

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

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

22 **SECTION 4. APPROPRIATION - GOVERNMENT NURSING FACILITY FUNDING**

23 **POOL.** There is hereby appropriated a total of \$20,543,942, of which \$6,058,739 is from the
24 general fund, to the department of human services for the purpose of making the payments
25 pursuant to section 2 of this Act. In the event that additional amounts in excess of \$20,543,942
26 become available during the biennium based on the calculation in section 2 of this Act, the
27 department of human services may increase the amount paid which funds are hereby
28 appropriated, subject to emergency commission and budget section approval, and providing
29 that any additional "state percentage" required be made available from a loan from the Bank of
30 North Dakota which funds are hereby appropriated.

1 **SECTION 5. APPROPRIATION - HEALTH CARE TRUST FUND.** There is hereby
2 appropriated a total of \$14,785,540 from special funds derived from amounts available in the
3 North Dakota health care trust fund to the department of human services for the purpose of the
4 implementation of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001.

5 **SECTION 6. LEGISLATIVE INTENT - ADMINISTRATIVE STAFF.** It is the intent of
6 the legislative assembly that two full-time equivalent administrative staff positions shall be
7 added to the positions authorized by the fifty-sixth legislative assembly for the department of
8 human services for the biennium beginning July 1, 1999, and ending June 30, 2001, for
9 carrying out the purposes of this Act.

10 **SECTION 7. REPEAL.** Chapter 50-21 of the North Dakota Century Code is repealed.

11 **SECTION 8. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in
12 application.

13 **SECTION 9. EMERGENCY.** This Act is declared to be an emergency measure.