

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2338

Introduced by

Senators Cook, Hogue, Laffen, Schneider

Representatives Bellew, Kreun

1 A BILL for an Act to create and enact a new subsection to section 57-02-08 of the North Dakota
2 Century Code, relating to a conditional exemption and payments in lieu of taxes for affordable
3 rental residential property; to amend and reenact subsection 8 of section 57-02-08 of the North
4 Dakota Century Code, relating to the property tax exemption for property owned by institutions
5 of public charity; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsection 8 of section 57-02-08 of the North Dakota Century
8 Code is amended and reenacted as follows:

- 9 8. All buildings belonging to institutions of public charity, including public hospitals and
10 nursing homes licensed pursuant to section 23-16-01 under the control of religious or
11 charitable institutions, used wholly or in part for public charity, together with the land
12 actually occupied by such institutions not leased or otherwise used with a view to
13 profit.
- 14 a. The exemption provided by this subsection includes any dormitory, dwelling, or
15 residential-type structure, together with necessary land on which such structure is
16 located, owned by a religious or charitable organization recognized as tax
17 exempt under section 501(c)(3) of the United States Internal Revenue Code
18 which is occupied by members of said organization who are subject to a religious
19 vow of poverty and devote and donate substantially all of their time to the
20 religious or charitable activities of the owner.
- 21 b. ~~For purposes of this subsection and section 5 of article X of the Constitution of~~
22 ~~North Dakota, property is not used wholly or in part for public charity or charitable~~
23 ~~or other public purposes if that property is residential rental units leased to~~

1 ~~tenants based on income levels that enable the owner to receive a federal-~~
2 ~~low-income housing income tax credit.~~

3 **SECTION 2.** A new subsection to section 57-02-08 of the North Dakota Century Code is
4 created and enacted as follows:

5 All residential rental property, inclusive of land and administrative and auxiliary
6 buildings, used as affordable housing shall be exempt from taxation for the property's
7 period of affordability.

8 a. The property is exempt under this section if the housing finance agency certifies
9 to the county director of tax equalization that on January 1, 2013, or thereafter,
10 the residential rental property complies with the following:

11 (1) The property is subject to and in compliance with a land use restriction
12 agreement that enumerates the mandatory income and rent restrictions;

13 (2) The property is owned by a qualified nonprofit entity, as defined in section 2
14 of the Internal Revenue Code [26 U.S.C. 421]. If under a partnership
15 agreement or other legally enforceable instrument, a for-profit entity, such
16 as a limited partner, has an ownership interest in the property, then the
17 agreement must provide that the nonprofit entity must have the right of first
18 refusal in any transfer of the ownership interest in the property. The
19 partnership agreement or other legally enforceable instrument also must
20 provide that any transfer of the ownership interest by the for-profit entity
21 must be without financial gain; and

22 (3) The general partner or other ownership entity is owned or controlled by a
23 nonprofit entity or a political subdivision.

24 b. For projects beginning after December 31, 2012, the exemption begins for the
25 first taxable year after the owners of the rental property receive a building permit
26 from the local jurisdiction in which the affordable housing residential rental
27 property will be located.

28 c. If part of the residential rental property is not eligible to receive assistance
29 through state or federal affordable housing programs, the exemption under this
30 section is calculated by dividing the number of income and rent-restricted units by
31 the total number of rental units.

- 1 d. In lieu of the ad valorem taxes that would otherwise be assessed, the project
2 owners shall make a payment equal to ~~five~~six percent of the balance of the total
3 annual rents collected during the preceding calendar year, minus the utility costs
4 for the property paid by the owner of the property.
- 5 e. If an affordable housing rental property fails to comply with the requirements of
6 this section, or fails to comply with rent and household income restrictions under
7 a local, state, or federal affordable housing program, on or before March fifteen of
8 each calendar year, the housing finance agency shall notify the director of tax
9 equalization and the state supervisor of assessments that the property is no
10 longer eligible for the exemption.
- 11 f. For the purposes of this subsection, "affordable housing" includes property
12 eligible for or receiving assistance through a state or federal affordable housing
13 program and in which rent and household income restrictions apply, and which is
14 owned by nonprofit entities organized for the purpose of providing affordable
15 housing. Affordable housing is limited to residential rental property owned by or
16 with a controlling ownership or management interest by an organization
17 organized and operated exclusively for exempt purposes set forth in section
18 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

19 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
20 December 31, 2012.