

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1383

Introduced by

Representatives Dorso, Clark

Senators Grindberg, G. Nelson

- 1 A BILL for an Act to provide for establishment and operation of the housing development fund
2 and to provide a financial institutions tax credit for participation in the fund; to provide a penalty;
3 to provide for a transfer; and to provide an effective date.

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

5 **SECTION 1. Definitions.** As used in this Act:

- 6 1. "Financial institution" means a financial institution as defined in section 57-35.3-01.
7 2. "Fund" means the housing development fund.
8 3. "Fund administrator" means a certified development corporation with a statewide
9 focus which the small business administration has designated as a certified
10 development corporation.
11 4. "Governing board" means the board of directors of the corporation or board of
12 governors of the limited liability company established under section 2 of this Act.

13 **SECTION 2. Establishment - Organization.** Any financial institution or group of
14 financial institutions may establish a corporation or a limited liability company to own and
15 operate the housing development fund. Except as provided in this Act, all authority regarding
16 the articles of incorporation or articles of organization is the province of the governing board,
17 which must include a representative of the Bank of North Dakota and a representative of the
18 department of economic development and finance. The fund administrator shall maintain the
19 fund as an account at the Bank of North Dakota. The governing board is responsible for
20 adopting policies and procedures governing activities in connection with the fund. The
21 governing board may not distribute more than seventy-five percent of the net profit of the fund
22 in any of the first five years of operation.

23 **SECTION 3. Housing development fund use.** The housing development fund
24 established under section 2 of this Act may be used only for making participation loans in

1 housing development projects in this state. The participation of the fund in a loan may not
2 exceed the aggregate of loans from other sources and the investment of the project developer.
3 A loan from the fund may not be made to a financial institution. The governing board shall
4 establish the rate of interest and terms of repayment for a loan from the fund. Loans may be
5 made from the fund for any housing project in the state, but the primary focus for loans from the
6 fund must be to provide funding for multifamily housing projects in rural areas that are
7 experiencing or expecting a shortage of housing as a result of economic development. For
8 purposes of this section, "rural areas" means the area of the state not within the corporate limits
9 of a city with a population of twenty thousand or more.

10 **SECTION 4. Loan administration.** An application for a loan from the fund must
11 contain the information prescribed by the governing board. Except as provided in this section,
12 information contained in applications for loans from the fund is confidential. The fund
13 administrator shall review each loan application; report to the governing board whether the
14 applicant represents a housing project, whether the housing project is for multifamily housing,
15 and whether the housing project is located in a rural area; and make a recommendation to the
16 governing board on whether to approve the loan application. The commissioner of the
17 department of banking and financial institutions may examine the fund and activities of financial
18 institutions in connection with the fund to assure compliance with applicable laws. The fund
19 shall pay the costs of an examination and credit may not be allowed to any financial institution
20 for payment of examination costs.

21 **SECTION 5. Audited financial statement - Report of fund operations.** The
22 governing board shall contract annually with a certified public accountant for performance of an
23 audit and preparation of audited financial statements of the fund, prepared in accordance with
24 generally accepted accounting principles, and a report containing an analysis of the impact of
25 the fund on the state's economy, business and employment activity generated by loans from
26 the fund, and the effects of that activity on state and local tax revenues. The governing board
27 shall provide the financial statements and report to the governor, the commissioner of the
28 department of banking and financial institutions, and the legislative council. The governing
29 board shall make copies available to the public upon request. The cost of the audit and
30 preparation of financial statements and report must be paid from the fund.

1 **SECTION 6. Financial institutions tax credit - Penalty.** If the requirements of this
2 Act are met, a financial institution is entitled to a credit against taxes due under section
3 57-35.3-03 as determined under this section.

4 1. A financial institution making or participating in a loan under this Act is entitled to a
5 credit calculated for each calendar year the loan is in place. The amount of the
6 credit is the difference between:

7 a. The participating financial institution's share of the interest earned on the loan
8 during the calendar year; and

9 b. The participating financial institution's share of an amount of interest that
10 would have been earned during the same period by applying an interest rate,
11 calculated by adding three hundred basis points to a comparable treasury
12 security rate at the date of the issuance of the loan.

13 2. The maximum credit allowed a financial institution for any calendar year is the
14 amount of interest that would have been earned during the period by applying an
15 interest rate of three hundred basis points. A credit may not be allowed if the
16 interest earned exceeds the interest that would have been earned by applying the
17 calculation in subdivision b of subsection 1.

18 3. The credit may not exceed the total amount of the financial institution's tax liability
19 under chapter 57-35.3 and unused credit may not be carried forward.

20 4. Credits under this section for all financial institutions may not exceed an aggregate
21 amount of seven hundred and fifty thousand dollars in a calendar year.

22 **SECTION 7. Loans limited by assets of financial institutions.** The aggregate
23 amount of all loans made by a financial institution under this Act or the aggregate amount of a
24 financial institution's participation in loans made under this Act may not at any time exceed five
25 percent of the financial institution's admitted assets or the amount equal to the company's
26 capital and surplus in excess of the minimum capital and surplus required by law, whichever is
27 less.

28 **SECTION 8. TRANSFER.** Before February first of each year, the state treasurer shall
29 transfer from the North Dakota development fund to the financial institution tax distribution fund
30 an amount that equals the aggregate amount of credits under this Act which were claimed and
31 allowed under chapter 57-35.3 for the taxable year for which an allocation is to be made by

1 March first under section 57-35.3-09. The tax commissioner shall certify to the state treasurer
2 on or before January twenty-third of each year the amount that must be transferred from the
3 North Dakota development fund under this section. Transfers from the North Dakota
4 development fund may be made by the state treasurer in the sum of \$1,072,000, or so much of
5 the sum as may be necessary, for the purpose of avoiding loss of revenues to political
6 subdivisions under chapter 57-35.3 for the biennium beginning July 1, 1999, and ending
7 June 30, 2001.

8 **SECTION 9. EFFECTIVE DATE.** Sections 1 through 7 of this Act are effective for
9 taxable years beginning after December 31, 1998.