

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2355

Introduced by

Senator J. Lee

Representative Weisz

1 A BILL for an Act to amend and reenact sections 23-01-03 and 23-01-04, subsection 1 of
2 section 23-01-05, and sections 23-01-24, 23-16-06, 23-16-10, 23-17.5-11, 23-20.1-06,
3 23-24-02, 23-24-02.1, 23-24-03, 23-24-04, 23-24-05, 23-24-06, 23-25-08, 23-29-10, 50-21-02,
4 and 50-21-04 of the North Dakota Century Code, relating to the powers and duties of the state
5 health council.

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

7 **SECTION 1. AMENDMENT.** Section 23-01-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **23-01-03. Powers and duties of the health council.**

10 The health council shall:

- 11 1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings
12 of the council.
- 13 2. Make rules and regulations for the government of the council and its officers and
14 meetings.
- 15 3. Establish standards; ~~and rules, and regulations~~ subject to the approval of the state
16 health officer, which are found necessary for the maintenance of public health,
17 including sanitation and disease control. The council shall submit all proposed
18 standards and rules to the health officer for consideration by the state health officer
19 before proceeding to implement any standard or rule that the council is authorized by
20 law to adopt.
- 21 4. Provide for the development, establishment, and enforcement of basic standards for
22 hospitals and related medical institutions which render medical and nursing care, and
23 for the construction and maintenance of such institutions, such standards to cover
24 matters pertaining to sanitation, building construction, fire protection measures,

1 nursing procedures, and preservation of medical records. No rule may be adopted with
2 respect to building construction of existing medical hospitals or related medical
3 institutions unless the rule relates to safety factors or the hospital or related medical
4 institution changes the scope of service in such a way that a different license is
5 required from the department pursuant to rules adopted under chapter 23-16.

6 5. ~~Hold hearings on all matters brought before it by applicants and licensees of medical~~
7 ~~hospitals with reference to the denial, suspension, or revocation of licenses and make~~
8 ~~appropriate determination as specified herein.~~ Advise the state health officer regarding
9 the conduct and disposition of hearings and appeals that may come before the state
10 health officer.

11 The council may direct the state health officer to do or cause to be done any or all of the things
12 which may be required in the proper performance of the various duties placed upon the state
13 department of health.

14 **SECTION 2. AMENDMENT.** Section 23-01-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **23-01-04. Effect of rules and regulations.**

17 All rules ~~and regulations promulgated~~ adopted by the health council under the powers
18 granted by any provisions of this title are binding upon all county and municipal health officers,
19 and upon all county, municipal, and private medical hospitals and upon related institutions, and
20 have the force and effect of law if approved in advance by the state health officer.

21 **SECTION 3. AMENDMENT.** Subsection 1 of section 23-01-05 of the North Dakota Century
22 Code is amended and reenacted as follows:

23 1. Enforce all rules ~~and regulations as promulgated~~ adopted by the health council, if the
24 rules are properly adopted after approval by the state health officer.

25 **SECTION 4. AMENDMENT.** Section 23-01-24 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **23-01-24. Health care cost and quality review program - Penalty.**

28 The state department of health shall conduct a continuous program to review and improve
29 the quality of health care in the state. The department may contract with a qualified person ~~or~~
30 ~~organization~~ to develop and implement the program. The department shall use the program to
31 compile relevant information about the quality of health care in this state which will allow the

1 department to evaluate the cost, quality, and outcomes of health care. The department shall
2 establish and consult a provider advisory committee composed of health care providers
3 regarding the data that is a cost-effective process for collecting and evaluating the information.
4 The state ~~department of health officer~~ may assess against a provider a penalty of one hundred
5 dollars per day for each day the provider willfully refuses to provide the department with
6 information requested for use with the program, but the penalty may not exceed one thousand
7 dollars for each request. A provider against whom a fee is assessed may appeal that
8 assessment to the state health ~~council officer~~. If the provider fails to pay the penalty, the state
9 ~~health council officer~~ may, in the county where the provider's principal place of business is
10 located, initiate a civil action against the provider to collect the penalty. As used in this section,
11 "provider" means a person who is licensed, certified, or otherwise authorized by the law of this
12 state to administer health care in the ordinary course of business or professional practice. The
13 department shall ensure that patient privacy is protected throughout the compilation and use of
14 the information. The department shall evaluate data management capabilities in the state and
15 shall organize its capabilities to provide information about the cost of care on an individual
16 provider basis as well as a collective basis.

17 **SECTION 5. AMENDMENT.** Section 23-16-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **23-16-06. Authority to issue, deny, suspend, or revoke licenses.**

20 The state department of health shall issue licenses for the operation of institutions subject
21 to this chapter which are found to comply with ~~the provisions of this chapter and such~~
22 ~~regulations~~rules as are lawfully ~~promulgated~~adopted by the state health council. The state
23 health officer ~~with the approval of the health council~~ may, after a hearing, suspend or revoke
24 licenses issued hereunder on any of the following grounds:

- 25 1. Violation of any of the ~~provisions of this chapter or the rules and regulations-~~
26 ~~promulgated~~adopted pursuant thereto.
- 27 2. Permitting, aiding, or abetting the commission of any unlawful act.
- 28 3. Conduct or practices detrimental to the health or safety of patients and employees of
29 said institutions; provided that this provision may not be construed to have any
30 reference to practices authorized by law; and provided further that no license may be
31 suspended or revoked for any trivial violation.

1 No application for a license may be denied, or any licenses suspended or revoked, except after
2 a hearing before the state health council~~officer~~ held pursuant to written notice to the applicant or
3 licensee, served by registered or certified mail, which notice must concisely state the grounds
4 for such denial or for such proposed suspension or revocation and must fix the time and place
5 of hearing which may not be less than thirty days after the date of the mailing of such notice.
6 After such hearing, the ~~council~~state health officer shall make an order, either denying the
7 application for license or granting the same, or suspending or revoking such license, or
8 dismissing the proceedings to suspend or revoke as the merits of the case warrant. The
9 ~~council~~state health officer shall send a copy of ~~its~~the order to the applicant or licensee by
10 registered or certified mail, which must contain ~~its~~the findings and conclusions of the state
11 health officer, and such order, except an order of dismissal, becomes final thirty days after the
12 date of mailing unless the applicant or licensee appeals therefrom in the manner provided by
13 section 23-16-10.

14 **SECTION 6. AMENDMENT.** Section 23-16-10 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **23-16-10. Appeal.**

17 An appeal may be taken to the district court from any order of the state health officer ~~or~~
18 ~~health council~~ denying an application for a license to operate a medical hospital or related
19 institution, or suspending or revoking a license, or from any order denying an application for a
20 construction project. Any such appeal must be taken in the manner provided in chapter 28-32.

21 **SECTION 7. AMENDMENT.** Section 23-17.5-11 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23-17.5-11. Assessment - Health care cooperative agreement fund.**

24 The department shall establish an assessment to be paid by each party to a cooperative
25 agreement. The aggregate amount of the assessment for a cooperative agreement may not
26 exceed forty thousand dollars, unless the department determines that an extraordinary need
27 exists for an additional amount to ensure effective evaluation of the application or supervision
28 under section 23-17.5-03.1. ~~The parties may require that the determination of the need for an~~
29 ~~additional amount is subject to approval by the state health council.~~ An appeal may be taken
30 under chapter 28-32 from a determination of the state health council~~officer~~. After consultation
31 with the parties, the department may require the payment of the assessment on an incremental

1 basis and may require separate payments for the process of evaluating the application or for
2 the process of active supervision. The assessment may be modified by agreement between the
3 department and the parties to the cooperative agreement. The department shall deposit the
4 moneys received under this section in the health care cooperative agreement fund of the state
5 treasury.

6 **SECTION 8. AMENDMENT.** Section 23-20.1-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23-20.1-06. Administrative procedures and judicial review.**

9 Any proceeding under this chapter for:

- 10 1. The issuance or modification of rules including emergency orders relating to control of
11 sources of ionizing radiation;
- 12 2. Granting, suspending, revoking, or amending any license; or
- 13 3. Determining compliance with rules of the department;

14 must be conducted in accordance with the provisions of chapter 28-32. If an emergency exists
15 requiring immediate action to protect the public health and safety, the department may, without
16 notice or hearing, issue an order reciting the existence of such emergency and requiring that
17 such action be taken as is necessary to meet this emergency. Notwithstanding any provision of
18 this chapter, such order is effective immediately. Any person to whom such order is directed
19 shall comply therewith immediately, but on application to the department must be afforded a
20 hearing before the state health ~~council~~officer within ten days. On the basis of such hearing, the
21 emergency order must be continued, modified, or revoked within thirty days after such hearing.

22 **SECTION 9. AMENDMENT.** Section 23-24-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23-24-02. Petition for establishment of vector control districts - Hearing thereon and**
25 **investigation - District when created.**

26 Whenever there is filed with the state health ~~council~~officer a petition signed by the
27 governing body of a county, city, or township or by twenty percent or more of the freeholders
28 within the limits of a proposed vector control district, the state health ~~council~~officer shall fix a
29 time and place for a public hearing on such petition. The place of hearing must be convenient
30 and accessible for a majority of the freeholders of the proposed district. Not less than ten days
31 ~~prior to~~before the date of hearing, notice thereof must be published in at least one newspaper of

1 general circulation in the proposed district. ~~Prior to such~~Before the hearing the state health
2 officer shall make or cause to be made an investigation of the need for the establishment of the
3 proposed vector control district and ~~shall submit his report to the council.~~ If the state health-
4 council finds that it is not feasible, desirable, or practical to establish the proposed district, it
5 shall ~~make an order denying the petition and state therein the reasons for its action.~~ If, however,
6 the ~~council~~state health officer finds the problems of vector control or other reasons make the
7 establishment of the proposed district desirable, proper, and necessary, ~~it~~the state health officer
8 shall grant the petition and create such district and establish the boundaries thereof.

9 **SECTION 10. AMENDMENT.** Section 23-24-02.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **23-24-02.1. Petition for withdrawing from a vector control district - Hearing and**
12 **investigation - Boundary modification.**

13 Any county, city, or township or portion of a county, city, or township may withdraw from a
14 vector control district whenever a petition signed by the governing body of the county, city, or
15 township or at least twenty percent of the residents of the county, city, or township, or portion
16 thereof, desiring to withdraw from the district, is approved by the state health ~~council~~officer.
17 ~~Prior to~~Before approving a petition to withdraw from the district, the state health ~~council~~officer
18 shall fix a time and place for a public hearing on the petition. The place of the hearing must be
19 convenient and accessible for a majority of the residents of the district. At least ten days ~~prior~~
20 ~~to~~before the date of the hearing, the state health ~~council~~officer shall publish a notice of the
21 hearing in at least one newspaper of general circulation in the district. ~~Prior to~~Before the hearing
22 the state health officer shall investigate the petition to withdraw and ~~shall submit a report to the~~
23 ~~council.~~ If the state health ~~council~~officer finds that it is not feasible, desirable, or practical to
24 allow the petitioning entity to withdraw from the district, ~~it~~the state health officer shall make an
25 order denying the petition and state the reasons for ~~its~~the state health officer's action. If the
26 ~~council~~state health officer finds that the petitioning entity is no longer benefited by being
27 included within the boundaries of the district or if other reasons make the withdrawal of the
28 petitioning entity desirable, proper, and necessary, ~~it~~the state health officer shall grant the
29 petition and modify the boundaries of the district. ~~No person~~An individual may not be a member
30 of the board of commissioners if that ~~person~~individual is no longer a resident of the vector

1 control district after the boundaries have been modified. A new member must be appointed to
2 replace any such member in the manner provided for original appointments.

3 **SECTION 11. AMENDMENT.** Section 23-24-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23-24-03. Area to be included within district - How determined.**

6 The area or areas to be included in the district must contain the territory described in the
7 petition for the creation or modification thereof. However, the ~~council~~state health officer, upon
8 ~~the state health officer's~~ own motion or upon the request of the board of commissioners, shall
9 consider and may include within the boundaries of the district areas which may be benefited by
10 being included therein. Upon a request by the board of commissioners to expand an existing
11 district, the ~~council~~state health officer shall hold a hearing and investigation and file any order
12 expanding a district in a manner similar to that provided in sections 23-24-02 and 23-24-04.

13 **SECTION 12. AMENDMENT.** Section 23-24-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23-24-04. Order establishing or modifying district.**

16 A certified copy of the order establishing or modifying a vector control district must be filed
17 with the county auditor of each county within which any portion of the district lies and like copy
18 of the order must be filed in the office of the secretary of state. The secretary of state shall make
19 and issue to the ~~council~~state health officer a certificate bearing the seal of the state of the due
20 organization of the district and shall record the certificate and the order of the ~~council~~state
21 health officer establishing or modifying the district. The certificate of the secretary of state or a
22 copy thereof authenticated by the secretary of state is prima facie evidence of the organization
23 of the vector control district. Such district is a governmental agency, body politic and corporate,
24 with the authority to exercise the powers specified in this chapter or which may be reasonably
25 implied in order to exercise such powers. The order of the ~~council~~state health officer must
26 specify the name or number by which the vector control district shall be known.

27 **SECTION 13. AMENDMENT.** Section 23-24-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **23-24-05. Board of commissioners - Composition - Appointment - Term of office -**
2 **Vacancy - Compensation.**

3 When an order of the ~~council~~state health officer creating a vector control district has been
4 filed in the office of the county auditor of a county in which the district or a part of the district is
5 situated, a three-member board of commissioners of the vector control district must be
6 appointed as provided by this section. Any resident freeholder in the district is eligible for
7 appointment to the board of commissioners ~~thereof~~. The term of commissioners first appointed
8 must be determined by lot. One commissioner shall hold office for a term of two years, one shall
9 serve for a term of three years, and one shall serve for a term of five years. The term of a
10 commissioner commences on the date of appointment. If the office of a commissioner becomes
11 vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the
12 member of the board of commissioners whom the new commissioner replaces. Any vacancy
13 must be filled in the manner provided for original appointments. Appointments to the board of
14 commissioners must be made by the board of county commissioners of the county containing
15 the largest area of the vector control district. Any member of the board of commissioners may
16 be removed upon a majority vote of the board of county commissioners that appoints members
17 for the board of commissioners and the board of commissioners may be dissolved upon a
18 majority vote of the board of county commissioners that appoints the members for the board.
19 Each member shall receive the sum of thirty dollars per day while performing duties as a
20 member of the board, or a lesser sum as the board may determine, an allowance for meals and
21 lodging as provided in section 44-08-04, and mileage expense reimbursement at the rate
22 provided in section 54-06-09.

23 **SECTION 14. AMENDMENT.** Section 23-24-06 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **23-24-06. Oath of office - Organization of board of commissioners - Appointment of**
26 **employees - Meetings.**

27 Upon receiving notice of appointment as a member of the board of commissioners of a
28 vector control district, ~~such~~the appointee shall take the oath of office prescribed for civil officers.
29 ~~Such~~The oath must be filed with the secretary of the board after organization thereof as herein
30 provided. Notice of the appointment of a member or members of a board of commissioners
31 must be mailed to the governing body of the county, city, or township included within ~~said~~the

1 district. ~~Such~~The notice must state the name and post-office address of each appointee and the
2 date of the appointment and must request approval of the same. The commissioners appointed
3 after their approval shall meet to organize at a time and place designated by the state health
4 ~~council~~officer and shall organize by selecting a chairman of the board and naming a temporary
5 secretary pending appointment of a permanent secretary. A majority of the commissioners
6 constitutes a quorum for the transaction of business as may come before the board but any
7 number may adjourn a meeting for want of a quorum. The board shall appoint a secretary and
8 treasurer and such other employees as may be ~~deemed~~determined needed for efficient conduct
9 of the district's business and shall fix their compensation. The office of secretary and treasurer
10 may be held by the same ~~person~~individual. Officers and employees shall hold office during the
11 pleasure of the board. The board shall provide an office suitable for its use as a meeting place
12 and for conducting the affairs of the district. ~~It~~The board shall adopt such rules ~~or~~ regulations for
13 transacting the business of the district as it may ~~deem~~determine necessary, including the time
14 and place of holding regular meetings of the board. Special meetings may be called by the
15 secretary on order of the chairman of the board or on written request of two members of the
16 board. Notice of the special meeting must be mailed to each member of the board at least five
17 days before any such meeting, provided that a special meeting may be held whenever all
18 members of the board are present or consent thereto in writing.

19 **SECTION 15. AMENDMENT.** Section 23-25-08 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **23-25-08. Administrative procedure and judicial review.**

22 Any proceeding under this chapter for:

23 1. The issuance or modification of rules ~~and~~ regulations including emergency orders
24 relating to control of air pollution; or

25 2. Determining compliance with rules ~~and~~ regulations of the department,

26 must be conducted in accordance with ~~the provisions of~~ chapter 28-32, and appeals may be
27 taken as therein provided. When an emergency exists requiring immediate action to protect the
28 public health and safety, the department may, without notice or hearing, issue an order reciting
29 the existence of ~~such~~an emergency and requiring that such action be taken as is necessary to
30 meet this emergency. Notwithstanding any provision of this chapter, ~~such~~the order must be
31 effective immediately, but on application to the department an interested person must be

1 afforded a hearing before the state health council ~~officer~~ within ten days. On the basis of ~~such~~ the
2 hearing, the emergency order must be continued, modified, or revoked within thirty days after
3 ~~such~~ the hearing. Except as provided for in this section, notice of any hearing held under this
4 chapter must be issued at least thirty days ~~prior to~~ before the date specified for the hearing.

5 **SECTION 16. AMENDMENT.** Section 23-29-10 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23-29-10. Administrative procedure and judicial review.**

8 Any proceeding under this chapter for the issuance or modification of rules and regulations,
9 including emergency orders relating to solid waste management and land protection, and
10 determining compliance with rules ~~and regulations~~ of the department, must be conducted in
11 accordance with ~~the provisions of~~ chapter 28-32, and appeals may be taken as therein
12 provided. When an emergency exists requiring immediate action to protect the public health and
13 safety, the department may, without notice or hearing, issue an order reciting the existence of
14 ~~such~~ an emergency and requiring that such action be taken as is necessary to meet this
15 emergency. Notwithstanding any provision of this chapter, ~~such~~ the order is effective
16 immediately, but on application to the department must be afforded a hearing before the state
17 health council ~~officer~~ within ten days. On the basis of ~~such~~ the hearing, the emergency order
18 must be continued, modified, or revoked within thirty days after ~~such~~ the hearing.

19 **SECTION 17. AMENDMENT.** Section 50-21-02 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **50-21-02. Administration of revolving fund.**

22 The revolving fund and loans made therefrom must be supervised and administered by the
23 Bank of North Dakota. All applications for loans under ~~the provisions of~~ this chapter for the
24 construction of nursing homes or combination nursing homes and basic care facilities must be
25 made to the state department of health, ~~which, The state department is authorized, subject to~~
26 ~~the approval of the North Dakota health council, to promulgate~~ of health may adopt such rules
27 ~~and regulations~~ as may be necessary to carry out ~~the provisions of~~ this chapter. All applications
28 for the construction of basic care facilities must be made to the state department of health,
29 ~~which, The~~ department shall ~~promulgate~~ adopt such rules ~~and regulations~~ as may be necessary
30 to carry out ~~the provisions of~~ this chapter. Applications approved by the state department of
31 health ~~and the North Dakota health council~~ must be forwarded to the Bank of North Dakota.

1 Upon approval of such an application by the president of the Bank of North Dakota, loans must
2 be granted by the Bank of North Dakota from the revolving fund in accordance with the
3 provisions of this chapter.

4 **SECTION 18. AMENDMENT.** Section 50-21-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-21-04. Standards - Administration procedure.**

7 The state department of health, ~~subject to the approval of the state health council,~~ shall
8 establish standards of construction which must be followed by all applicants receiving loans of
9 funds for the construction of nursing homes or combination nursing homes and basic care
10 facilities. The state department of health shall establish standards of construction which must be
11 followed by all applicants for loans for the construction of basic care facilities. The state
12 department of health council, in the case of the construction of nursing homes or basic care
13 facilities or combination nursing homes and basic care facilities, shall approve all building plans
14 and specifications for any facilities to be constructed in whole or in part with loans of funds
15 provided under the provisions of this chapter ~~prior to~~ before the disbursement of any such funds.
16 Administrative procedures established by the state department of health ~~with the approval of the~~
17 ~~health council~~ must, except to construction standards, be in general in accordance with the
18 procedures established for the administration of the federal grant-in-aid program for similar
19 purposes under the Hill-Burton Act, or federal acts supplemental thereto.