

CHAPTER 23-18.2 COUNTY NURSING HOMES

23-18.2-01. Declaration of legislative policy and purpose.

It is hereby declared that a serious shortage of safe and sanitary nursing home accommodations for persons whose need for combined nursing care, lodging, and board cannot readily be provided by the ordinary unaided operations of private enterprise, exists in many communities throughout this state; that there is a need for governmental participation in the construction, acquisition, reconstruction, rehabilitation, and operation of low-cost nursing home accommodations, including such other facilities as may be incidental and appurtenant thereto; and that it is the policy of this state to encourage private enterprise to make every effort to provide such services to the citizens of this state.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended.

23-18.2-02. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Nursing home" means such institutions or facilities defined by subsection 3 of section 43-34-01, with the exception of those institutions or facilities administered by state government or any agency or political subdivision thereof, but including those institutions or facilities constructed, acquired, leased, or rehabilitated under the provisions of this chapter, and also including any institution or facility defined by and included in section 23-09.3-01.
2. "Nursing home project" or "project", as the case may be, means a specific work or improvement, including lands, buildings, fixtures, and articles of personal property acquired, constructed, rehabilitated, managed, owned, or operated pursuant to this chapter to provide nursing home accommodations, board, and nursing care to sick, invalid, infirm, disabled, or convalescent persons.

23-18.2-03. Creation of nursing home authority by election.

When a petition signed by not less than twenty percent of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a nursing home authority is presented to the board of county commissioners, the board of county commissioners shall submit the question to the qualified electors of the county at the next countywide election. Upon approval by sixty percent of the votes cast, the board of county commissioners shall establish a county nursing home authority as described in sections 23-18.2-03 through 23-18.2-07 with all its powers, including the powers to issue bonds and certify a tax levy as described in sections 23-18.2-16 and 23-18.2-12, respectively.

23-18.2-04. Commissioners of authority - Appointment, compensation, qualifications, tenure.

Upon an affirmative vote of the county electors in the election required by section 23-18.2-03, the board of county commissioners shall appoint five persons as commissioners for the authority created in the county. The commissioners who are first appointed must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, and thereafter, each commissioner must be appointed for a term of five years, except that all vacancies must be filled for the unexpired term. No commissioner of an authority may be an officer or an employee of the county for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified. A commissioner is entitled to receive as compensation sixty-two dollars and fifty cents per day while actually engaged in official duties of the authority and must be reimbursed for mileage and expenses in the amounts provided by sections 44-08-04 and 54-06-09.

23-18.2-05. Officers of authority, election - Quorum.

The commissioners of the authority shall elect annually from its membership a chairman and vice chairman. Three commissioners constitute a quorum for the purpose of conducting the business of the authority.

23-18.2-06. Power of commissioners of authority.

The powers of any county nursing home authority must be vested in the commissioners of the authority. The authority may delegate to one or more of its agents or employees such powers and duties as the authority may deem proper.

23-18.2-07. Employees of authority - Duty of state's attorney - Legal assistants.

The commissioners of the authority may employ a secretary, who must be the executive director of the authority, and such technical experts, and other officers, agents, and employees as it deems necessary. The commissioners shall determine the qualifications of all persons employed and their duties and compensation. For such legal services as may be required, the commissioners may call upon the state's attorney of their county, or they may employ counsel or a legal staff for the authority.

23-18.2-08. Commissioner or employee may not have interest in nursing home or property to be used.

No commissioner or employee of an authority may acquire any direct or indirect interest in any nursing home project or in any property included or planned to be included in any project, nor have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used in connection with any nursing home. If any commissioner or employee of an authority owns or controls a direct or indirect interest in any property included or planned to be included in any nursing home, the commissioner or employee immediately shall disclose the same in writing to the authority and such disclosure must be entered upon the minutes of the authority. Failure to disclose such interest constitutes misconduct in office.

23-18.2-09. Removal of commissioners.

A commissioner of an authority may be removed by the board of county commissioners of the county wherein the authority is located. A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office. A commissioner may be removed only after the commissioner has had an opportunity to be heard upon the charges. A copy of the charges must be served upon the commissioner at least ten days before the date fixed for the hearing. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, must be filed in the office of the county auditor.

23-18.2-10. Powers and duties of authority.

An authority has the following powers and may exercise the following duties:

1. To exercise public and essential governmental functions.
2. To sue and be sued.
3. To have perpetual succession.
4. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
5. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with the provisions of this chapter, as are necessary to carry into effect the powers and purposes of the authority.
6. To construct, acquire, lease, and operate nursing homes within its area of operation.
7. To provide for the construction, reconstruction, improvement, alteration, or repair of any nursing home, or any part thereof, within its area of operation.
8. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a nursing home project or the occupants thereof.

9. To include, in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor shall comply with requirements as to minimum wages and maximum hours of labor and any conditions which the federal government may have attached to its financial aid of the project.
10. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any nursing home project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor.
11. To own, hold, and improve real or personal property.
12. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any real or personal property or any interest therein.
13. To certify a mill tax as provided in section 23-18.2-12.
14. To sell, lease, exchange, transfer, or dispose of any real or personal property, or any interest therein.
15. To insure, or provide for the insurance of, any real or personal property, or any operation of the authority, against any risks or hazards.
16. To invest any funds held by it in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control.
17. To purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be canceled.
18. To engage in research, studies, and experimentation on the subject of nursing homes within its area of operation.
19. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information.
20. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance.
21. To issue bonds from time to time for construction of nursing homes or the making of capital improvements thereon.
22. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by it.
23. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any nursing home project within its area of operation.
24. To enter into joint functions pursuant to section 54-40-08, with any private nursing home company.
25. To comply with such conditions and to enter into such trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out the provisions of this subsection and subsection 24.
26. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any nursing home project.
27. To exercise all or any part or combination of powers herein granted.
28. To exercise such other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 19 and 20, may act through one or more of the commissioners or through other persons designated by it. No provision of law with respect to the acquisition, operation, or disposition of property by other public bodies is applicable to an authority unless there is specific provision to that effect by the legislative assembly.

23-18.2-11. Authority may contract with private nursing homes for services.

In addition to the other powers of an authority granted by the provisions of this chapter, an authority has the power to contract with any nonprofit corporation, limited liability company, partnership, association, or other private nonprofit entity for nursing facilities to be used in addition to, or in lieu of, a county nursing home constructed by the authority. Such services may

be paid for by the authority with the proceeds of any mill tax levied under this chapter or other funds available to it for such purposes.

23-18.2-12. Tax levy may be certified by nursing home authority.

The nursing home authority may certify annually to the board of county commissioners a tax not exceeding the limitation in subsection 13 of section 57-15-06.7 for a nursing home fund which tax may be levied by the board of county commissioners. The proceeds of the tax collected in the fund must be used first for the payment of principal and interest on any bonds, issued under the provisions of this chapter, which may be due or about to become due. The remaining proceeds in the fund may also be used for any other corporate purpose of the authority, including, but not limited to, costs of operation and costs of obligations entered into with private nursing homes.

23-18.2-13. Rentals to be at lowest possible rate - Authority not to be operated for profit.

Each nursing home authority shall manage and operate its nursing homes in an efficient manner so as to enable it to fix the rentals for accommodations and services at the lowest possible rates consistent with its providing decent, safe, and sanitary nursing accommodations and consistent with the provisions of section 23-18.2-14. No authority may construct or operate any project for profit or as a source of revenue to the city or the county.

23-18.2-14. Rentals - How fixed by authority - Use of rental fees.

An authority shall fix the price of its accommodations and services in its nursing homes at no higher rates than it finds to be necessary in order to produce revenues which, together with any remaining funds derived from the mill levy tax provided for in section 23-18.2-12, and all other available moneys, revenues, income, and receipts of the authority from whatever source derived, may be sufficient to meet the cost of, and provide for maintaining and operating the projects of the authority, including the cost of any insurance thereon, and the administrative expenses of the authority.

23-18.2-15. Planning, zoning, and building laws.

All nursing home projects of an authority are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable in the locality in which the housing project is situated. In the planning and location of any project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the authority functions.

23-18.2-16. Bonds - Type which may be issued.

An authority may issue such types of bonds as it may determine, provided that the interest and principal on any such bonds are payable first from the revenues derived from the mill tax levy authorized by this chapter. The bonds and other obligations of the authority are not payable out of any other funds or properties other than those of the authority. In no event may any bonds issued by a county nursing home authority be secured by a mortgage on the property of any nursing home project.

23-18.2-17. Bonds - Issued pursuant to resolution - General provisions.

Bonds of an authority must be issued pursuant to a resolution of the commissioners thereof. Such resolution must specify:

1. Whether such bonds must be issued in one or more series.
2. The date or dates which the bonds must bear.
3. The time or times at which the bonds must mature.
4. The interest rate or rates resulting in an average annual net interest cost, not exceeding eight percent per annum, on those issues which are sold at private sale, which the bonds must bear.
5. The denomination or denominations in which the bonds must be issued.

6. The form, either coupon or registered, in which the bonds must be issued.
7. The conversion or registration privileges, if any, which the bonds must carry.
8. The rank or priority which must exist between various issues of bonds and various kinds of bonds issued.
9. The manner in which the bonds must be executed.
10. The medium in which the bonds must be payable.
11. The place or places at which the bonds must be payable.
12. The terms of redemption, and whether with or without premium, to which the bonds are subject.

The conditions specified in the resolution may be printed in any trust indenture given by the authority to secure any bonds issued by it.

23-18.2-18. Bonds - Liability - Tax exempt.

Neither the commissioners of an authority nor any person executing bonds of the authority is liable personally thereon by reason of the issuance thereof, nor is any city, county, or state, or political subdivision thereof, liable thereon. The bonds and other obligations of an authority are not a debt of the city, county, or state, nor of any political subdivision thereof, and must so state on their face. They do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Such bonds, together with the interest thereon and income therefrom, are exempt from taxation.

23-18.2-19. Sale of bonds.

Except as hereinafter provided, bonds issued by an authority must be sold at a public sale held after a notice has been published at least five days prior to the sale in a newspaper having a general circulation in the city or county, as the case may be, and in a financial newspaper published in the city of New York or in the city of Chicago. There must be no interest rate ceiling on issues sold at public sale. Such bonds may be sold to the federal government, however, at private sale without public advertisement. Such bonds may also be sold at a private sale when such obligations do not exceed the total sum of one hundred thousand dollars. The bonds may not be sold for less than ninety-eight percent of par.

23-18.2-20. Bonds - Validity when officer who signs bond is no longer in office - Deemed issued for housing project.

If any of the commissioners or officers of an authority whose signatures appear on any bonds or coupons cease to be such commissioners or officers before the delivery of the bonds, the signatures are valid and sufficient for all purposes the same as if the commissioners or officers had remained in office until the delivery had been completed. Any bonds issued pursuant to the provisions of the chapter must be fully negotiable. In an action, suit, or proceeding involving the validity or enforceability of any bond of an authority or of the security therefor, the bond must be deemed conclusively to have been issued for a nursing home project if the bond recites that it has been issued by the authority to aid in financing a nursing home project to provide nursing home accommodations and services. The project conclusively must be deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this chapter if such a statement is contained in the bond.

23-18.2-21. Provisions of bonds and trust indentures.

In connection with the issuance of bonds or the incurring of obligations under leases, and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, has power:

1. To pledge all or any part of its gross or net rents, fees, taxes, or other revenues to which its right then exists or thereafter may come into existence.
2. To covenant against pledging all or any part of its rents, fees, taxes, and revenues to which its right or title then exists or thereafter may come into existence, or against permitting or suffering any lien on any such revenues.

3. To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof.
4. To covenant as to what other or additional debts or obligations may be incurred by it.
5. To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.
6. To provide for the replacement of lost, destroyed, or mutilated bonds.
7. To covenant against extending the time for the payment of its bonds or interest thereon.
8. To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof.
9. To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a nursing home project or projects, the amount to be raised each year or other period of time by rents, fees, taxes, and other revenues, and as to the use and disposition to be made thereof.
10. To create, or to authorize the creation of, special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.
11. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.
12. To covenant as to the use of any or all of its real or personal property.
13. To covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys.
14. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.
15. To covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become, or may be declared, due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.
16. To vest in a trustee or trustees or in the holders of bonds, or any proportion of them, the right to enforce the payment of the bonds or any covenant securing or relating thereto.
17. To vest in a trustee or trustees the right, in the event of a default by the authority, to take possession and to use, operate, and manage any housing project or part thereof, to collect the rents and revenues arising therefrom, and to dispose of such moneys in accordance with the agreement of the authority with said trustee.
18. To provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof.
19. To provide the terms and conditions upon which the trustee or trustees or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds.
20. To exercise all or any part or combination of the powers herein granted.
21. To make covenants other than, and in addition to, the covenants herein expressly authorized, of like or different character.
22. To make such covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

23-18.2-22. Certification of attorney general as to legality of bonds.

An authority may submit to the attorney general of this state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, the attorney general shall examine and pass upon the validity thereof and of the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and otherwise are regular in form,

and if the bonds, when delivered and paid for, will constitute binding and legal obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of the state of North Dakota.

23-18.2-23. Rights and remedies of an obligee of authority.

An obligee of an authority, in addition to all other rights which may be conferred on the obligee, and subject only to any contractual restrictions binding upon such obligee, may:

1. By mandamus, suit, action, or proceeding at law or in equity, compel the authority and the commissioners, officers, agents, or employees thereof, to perform each and every term, provision, and covenant contained in any contract of the authority with or for the benefit of such obligee, and require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter.
2. By suit, action, or proceeding in equity, enjoin any act or thing which may be unlawful or in violation of any of the rights of such obligee of the authority.

23-18.2-24. Additional remedies conferrable by authority on obligee.

An authority, by its resolution, trust indenture, lease, or other contract, may confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, in addition to all rights that otherwise may be conferred, the right, upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding, in any court of competent jurisdiction:

1. To obtain the appointment of a receiver of any project of said authority, or of any part thereof, and of the rents and profits therefrom. If such receiver is appointed, the receiver may enter into and take possession of such project, or of any part thereof, and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and the receiver shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.
2. To require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

23-18.2-25. Exemption of real property from execution sale.

All real property of an authority is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against the same nor may any judgment against any authority be a charge or lien upon its real property. The provisions of this section, however, do not apply to nor limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, taxes, or revenues.

23-18.2-26. Tax exemptions and payments in lieu of taxes.

The property of an authority is declared to be public property used for essential public and governmental purposes and is exempt from all taxes and special assessments of the city, the county, the state, or any political subdivision thereof. In lieu of such taxes or special assessments, an authority may agree to make payments to the city, county, state, or any such political subdivision for improvements, services, and facilities furnished thereby for the benefits of a nursing home project, but in no event may such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

23-18.2-27. Reports.

At least once every year, an authority shall file with the city auditor or county auditor, as the case may be, a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

23-18.2-28. Municipalities may cooperate.

Any city, county, or other public body has the right and power to cooperate with nursing home authorities, or with the federal government, with respect to the development or administration of projects.

23-18.2-29. Cooperation between authorities.

Any two or more authorities may join or cooperate with one another in the exercise of any or all of the powers conferred upon them for the purpose of financing, planning, undertaking, constructing, or operating a nursing home project or projects located within the area of operation of any one or more of such authorities.