

No. 1984-141

AN ACT

HB 537

Amending the act of July 22, 1974 (P.L.610, No.207), entitled "An act providing loans for the repair, reconstruction and rehabilitation of nursing homes in order for them to comply with State and Federal Safety Standards; empowering the Governor, State Treasurer and Auditor General to issue general obligation bonds for this purpose; creating the Pennsylvania Nursing Home Loan Agency as a public corporation and government instrumentality; and empowering this agency to make loans and refinance loans to eligible nursing homes according to provisions of this act and making an appropriation," extending the provisions of the law to include personal care boarding homes; and adding the Secretary of Aging to the membership of the agency.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of July 22, 1974 (P.L.610, No.207), known as the Nursing Home Loan Agency Law, amended December 19, 1980 (P.L.1331, No.243), is amended to read:

Section 102. Legislative Finding.—(a) It is hereby determined and declared as a matter of legislative finding that—

(1) because most nursing homes in the Commonwealth do not presently comply with State and Federal Safety Standards including the Life Safety Code; and

(2) because financing of these safety improvements is apparently not presently available through private financing under terms and conditions which would enable the improvements to be made; and

(3) because of this and for this purpose the voters of the Commonwealth approved by referendum on May 21, 1974 the incurrence of a debt not to exceed one hundred million dollars (\$100,000,000) through the sale of general obligation bonds by the Commonwealth; and

(4) because of the need for financial assistance to encourage discontinuance of unneeded hospital services and the conversion of unneeded hospital services to nursing home services needed by the community[.]; and

(5) *because of the need for financial assistance to improve the living and safety conditions of residents of personal care boarding homes, the voters of the Commonwealth approved by referendum on November 2, 1982 the use of up to fifty million dollars (\$50,000,000) for loans for the repair, reconstruction and rehabilitation of personal care boarding homes from the original one hundred million dollars (\$100,000,000) approved.*

(b) There exists a need to create what shall be known as the Nursing Home Loan Agency to make such loans for safety improvements according to provisions of this act.

Section 2. The definitions of "reconstruction," "rehabilitation" and "repair" in section 103 of the act, the definition of "reconstruction" amended December 19, 1980 (P.L.1331, No.243), are amended and a definition is added to read:

Section 103. Definitions.—As used in this act unless otherwise indicated:
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“Personal care boarding home” means any of the following facilities:

(1) **any facility subject to licensure or approval as a personal care boarding home by the Department of Public Welfare under section 211 and Articles IX and X of the act of June 13, 1967 (P.L.31, No.21), known as the “Public Welfare Code”;** or

(2) **any facility subject to licensure or approval as a domiciliary care home by the Department of Aging under Article XXII-A of the act of April 9, 1929 (P.L.177, No.175), known as “The Administrative Code of 1929.”**

“Reconstruction” means the rebuilding or replacement of an existing personal care boarding home structure or an existing nursing home structure or a portion thereof, whether on the same or a nearby site, when it is impracticable or uneconomic to repair or rehabilitate such structure or portion thereof and which does not increase the bed capacity, and in areas in need of nursing home services the conversion of an existing structure or a portion thereof formerly used to provide inpatient hospital services, to a nursing home. This shall not include any loan of moneys for site acquisition.

“Rehabilitation” means alterations to an existing nursing home facility or an existing personal care boarding home, excluding routine maintenance, which do not increase the bed capacity, which make changes, improvements or additions required to meet governmental safety standards, which cost more than one hundred thousand dollars (\$100,000) and which do not constitute reconstruction.

“Repair” means alterations to an existing nursing home facility or an existing personal care boarding home, excluding routine maintenance, which do not increase the bed capacity, which make changes, improvements, or additions required to meet governmental safety standards and which cost less than one hundred thousand dollars (\$100,000).

Section 3. Sections 202(a) and (c), 203(6), (8), (9) and (10) and 205 of the act are amended to read:

Section 202. Agency Membership.—(a) The members of the agency shall be **[nine] ten** in number and consist of the following; the Secretary of Health, the Secretary of Public Welfare, the Secretary of Labor and Industry, the Secretary of Environmental Resources, the Secretary of Banking, **the Secretary of Aging**, the Secretary of Commerce and three additional members to be appointed by the Governor.

* * *

(c) The Secretary of Health, the Secretary of Public Welfare, the Secretary of Labor and Industry, the Secretary of Environmental Resources, the Secretary of Banking, **the Secretary of Aging** and the Secretary of Commerce may each appoint a deputy secretary to serve on the agency and perform the duties of a member of the agency as their designee.

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Section 203. Agency Powers.—The agency shall have the following powers:

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(6) In accordance with the provisions of this act, to make loans to nursing homes *or personal care boarding homes* for repair, reconstruction and rehabilitation as defined by this act in order that such nursing homes *or personal care boarding homes* may meet State and Federal Safety Standards and to set the terms and conditions of the loans as the agency deems necessary. In no case shall the rate of interest paid by the nursing home *or the personal care boarding home*, on the loan made by the Nursing Home Loan Agency, be less than the rate of interest paid by the Commonwealth on the last general obligation bonds issued pursuant to this act.

* * *

(8) To cooperate with other agencies and departments of the State, local and Federal Government involved with nursing homes *or personal care boarding homes* in order to accomplish the purpose of this act as expeditiously as possible.

(9) To acquire or take title to by foreclosure any real or personal property of a nursing home *or a personal care boarding home* which has pledged same as security for a loan granted by the Nursing Home Loan Agency, and which has defaulted. All costs arising out of such foreclosure and acquisition shall be paid from the Nursing Home Loan Fund.

(10) Any such real or personal property acquired through foreclosure may in the case of a nursing home *or a personal care boarding home* be operated by the agency for no more than six months and may be leased, sold, transferred or conveyed to any responsible buyer or tenant after public bidding.

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Section 205. General Funds.—The agency shall create and establish a fund, herein referred to as the Nursing Home Loan Fund, and shall pay into such fund any moneys appropriated and made available by the Commonwealth for the purposes of such loan fund, moneys received by the agency in repayment of loans, and any other moneys which may be available to the agency for its general purposes from any source or sources. The moneys in the loan fund shall be paid out in accordance with section 203 of this act for the payment of all debts and obligations legally incurred by the agency including but not limited to loans to nursing homes *and personal care boarding homes* and the administrative costs of the agency. All moneys received by the agency from nursing homes *or personal care boarding homes* for repayment of loans made by the agency or from sales or leases made pursuant to section 203 shall be transmitted to the State Treasurer for deposit into the General Fund of the Commonwealth.

Section 4. Section 301 of the act, amended December 19, 1980 (P.L.1331, No.243), is amended to read:

Section 301. Qualification of Applicants.—All nursing homes *or personal care boarding homes* shall be eligible to apply for loans from the Nursing Home Loan Agency under provisions of this act.

Section 5. Section 302 of the act, amended December 19, 1980 (P.L.1331, No.243), is amended to read:

Section 302. Loan Application Requirements.—(a) Prior to the loaning of any funds to a nursing home by the Nursing Home Loan Agency for purposes as provided for in this act, the Nursing Home Loan Agency shall receive from such nursing home a loan application which shall be on a form to be developed by the agency and shall contain, without being limited to, the following provisions:

(1) Evidence of compliance with all applicable regulations of other State departments or agencies for acceptance of Medicaid patients with the exception of the Life Safety Code, or a reconstruction plan which is in compliance with all applicable regulations of other State departments or agencies for acceptance of Medicaid patients.

(2) An approved plan of correction of Life Safety Code deficiencies or of compliance with Life Safety Code provisions by the Department of Labor and Industry.

(3) Detailed cost estimates of proposed repairs, rehabilitation or reconstruction.

(4) Evidence that the nursing home is financially unable to come into compliance with State and Federal Safety Standards without loan assistance from the agency.

(5) Evidence that there is a reasonable likelihood of loan repayment including the applicant's willingness to enter into such agreements, mortgages or other security instruments as the agency may deem necessary to secure the loan.

(a.1) Prior to the loaning of any funds to a personal care boarding home by the Nursing Home Loan Agency for purposes as provided for in this act, the Nursing Home Loan Agency shall receive from such personal care boarding home a loan application which shall be on a form to be developed by the agency and shall contain, without being limited to, the following provisions:

(1) Evidence satisfactory to the agency that the applicant operated the building as a personal care boarding home facility.

(2) Evidence of compliance with all applicable regulations of other State departments or agencies for acceptance of residents with the exception of the act of April 27, 1927 (P.L.465, No.299), referred to as the Fire and Panic Act, or a reconstruction plan which is in compliance with all applicable regulations of other State departments or agencies for acceptance of residents.

(3) An approved plan of correction of the Fire and Panic Act deficiencies by the Department of Labor and Industry or, in cities of the first class, second class or second class A, an approved plan of correction with the applicable local agency responsible for enforcing Fire and Panic Act requirements.

(4) Detailed cost estimates of proposed repairs, rehabilitation or reconstruction.

(5) Evidence that the personal care boarding home is financially unable to come into compliance with State or local safety standards without loan assistance from the agency.

(6) Evidence that there is a reasonable likelihood of loan repayment including the applicant's willingness to enter into such agreements, mortgages or other security instruments as the agency may deem necessary to secure the loan.

(b) Any loan for necessary repairs, reconstruction, or rehabilitation as defined in this act, may, with the approval of the Nursing Home Loan Agency, be applied toward a project larger in scope, providing that prior to the making of any loan under these circumstances, the agency has determined that the nursing home *or the personal care boarding home* has obtained from other independent and responsible sources, such as banks, insurance companies or otherwise, a firm commitment for all other funds, over and above the loan of the agency and has received from the nursing home *or the personal care boarding home* such funds or property as the Nursing Home Loan Agency determines necessary to hold as security for the loan.

(c) Insurance including but not limited to fire and liability on any loan approved by the agency as the agency may deem necessary is to be provided by the applicant for the term of the loan. The agency shall be named a beneficiary on all such insurance policies. In the event of nonpayment of premiums by a loan recipient, the agency may pay the same and charge the nursing home *or the personal care boarding home* for such premiums as if part of the loan obligation.

(d) The agency may place such limitations on the size of loans and the percentage of loan size to total project cost as are deemed appropriate.

(e) Any loan recipient shall covenant with the agency to implement a plan for protection of the present patients' *or residents'* right to occupy a repaired, rehabilitated, rebuilt or replacement facility prior to any other patients.

(f) A loan recipient shall not discriminate on the basis of race, creed, religion, sex, age or national origin and shall be in compliance with the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act," and Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. § 2000A, et seq. except that any nursing home *or personal care boarding home* affiliated with a religion or creed may grant priority admission to a member of such religion or creed.

(g) The agency shall enforce the terms and conditions of the loan agreement by such means as are available specifically including but not limited to a determination that the loan is in default and the undertaking of appropriate legal action, the levying of reasonable financial penalties, and the authority to order direct payment to the agency by the Commonwealth of any moneys due and owing to the nursing home *or the personal care boarding home* for care of medical assistance patients *or residents*.

Section 6. Sections 401, 405(a), and 408(b) of the act are amended to read:

Section 401. Authority to Borrow.—Pursuant to the provisions of clause (3) of subsection (a) of section 7 of Article VIII of the Pennsylvania Constitution and the referendum approved by the electorate on May 21, 1974 and

November 2, 1982, the Governor, the Auditor General and State Treasurer are hereby authorized and directed to borrow, on the credit of the Commonwealth of Pennsylvania, such sum or sums of money not exceeding in the aggregate the sum of one hundred million dollars (\$100,000,000), as may be found necessary to carry out the purposes of this act.

Section 405. Disposition and Use of Proceeds.—(a) The proceeds realized from the sale of bonds under the provisions of this act shall be paid into a special fund in the State treasury, hereby created, to be known as the “Nursing Home Loan Development Fund,” and are hereby specifically dedicated to the purposes of the referendum of May 21, 1974 *and the referendum of November 2, 1982* as implemented by this act. The moneys shall be paid by the State Treasurer periodically to those departments, agencies, or authorities authorized to expend same at such times and in such amounts as may be necessary to satisfy the funding needs of the department, agency or authority.

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Section 408. * * *

(b) The Board of Finance and Revenue is authorized at any time to use any of the moneys in the Nursing Home Loan Development Fund not necessary for the purposes of the referendum of May 21, 1974 *and the referendum of November 2, 1982* for the purchase and retirement of all or any part of the bonds issued under the authority of this article. In the event that all or any part of said bonds shall be purchased by the Board of Finance and Revenue, they shall be canceled and returned to the Loan and Transfer Agent as canceled and paid bonds and thereafter all payments of interest thereon shall cease, and the canceled bonds and coupons shall be destroyed within two years after cancellation in the presence of the Governor, the Auditor General and the State Treasurer, or their designees, and a certificate evidencing the destruction, satisfactory to the duly authorized loan and transfer agent of the Commonwealth shall be furnished to it. All canceled bonds and coupons shall be so marked as to make the canceled bonds and coupons nonnegotiable.

Section 7. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1984.

DICK THORNBURGH