

No. 207

AN ACT

HB 2475

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.

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

ARTICLE I General Provisions

Section 101. Short Title.—This act shall be known and may be cited as the “Nursing Home Loan Agency Law.”

Section 102. Legislative Finding.—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.

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 103. Definitions.—As used in this act unless otherwise indicated:

“Agency” means the Pennsylvania Nursing Home Loan Agency established by this act.

“Nursing home” means any facility licensed or approved as a nursing home by the Department of Public Welfare under the act of June 13, 1967 (P.L.31, No.21), known as the “Public Welfare Code.”

“Reconstruction” means the rebuilding or replacement of 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. This shall not include any loan of moneys for site acquisition.

“Rehabilitation” means alterations to an existing nursing home facility, 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, 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).

ARTICLE II

Pennsylvania Nursing Home Loan Agency

Section 201. Agency Creation.—A body corporate and politic, named the “Pennsylvania Nursing Home Loan Agency” is hereby created as a public corporation and government instrumentality to have continuing succession until its existence shall be terminated by law.

Section 202. Agency Membership.—(a) The members of the agency shall be nine 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 Commerce and three additional members to be appointed by the Governor.

(b) The Secretary of Commerce shall serve as chairman of the agency.

(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 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.

(d) The members initially appointed by the Governor shall serve for terms of one, two and three years respectively, the particular term of each to be designated by the Governor at the time of appointment. The term of all their successors shall be three years each, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Every member’s term shall extend until his successor is appointed. Any appointed member shall be eligible for reappointment.

(e) The members of the agency shall not receive compensation for their services as members, but shall receive reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

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

- (1) To adopt, use and alter at will a corporate seal.
- (2) To make and alter bylaws for the management and regulation of its affairs and to make and from time to time amend and repeal rules and regulations in accordance with the Commonwealth Documents Law governing the conduct of the business of the agency.
- (3) To enter into contracts of all kinds and to execute all instruments necessary or convenient for carrying on its operations.
- (4) To accept grants and subsidies from and enter into agreements or other transactions with any Federal agency or agency of the Commonwealth.
- (5) To be a party litigant in any court having jurisdiction according to law in any form of action whatsoever.
- (6) In accordance with the provisions of this act, to make loans to nursing homes for repair, reconstruction and rehabilitation as defined by this act in order that such nursing 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, 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.
- (7) To adopt administrative procedures pertaining to the processing of loan applications necessary for implementing provisions of this act.
- (8) To cooperate with other agencies and departments of the State, local and Federal Government involved with nursing 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 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 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.
- (11) To obtain office space, equipment, personnel and administrative support and services, for a fee, from the Pennsylvania Industrial Development Authority. The Pennsylvania Industrial Development Authority shall have the power to obtain personnel and services from any other department or agency of the Commonwealth which can provide services needed by the Nursing Home Loan Agency for implementation of this act.

(12) To invest any funds not required for immediate disbursement, or received in repayment of loans in such investments as may be lawful for fiduciaries under any law of the Commonwealth.

(13) To do all other things necessary to carry out the purposes and provisions of this act.

Section 204. Agency Moneys.—All moneys of the agency shall be deposited in the Nursing Home Loan Fund. The treasurer of the agency shall deposit such funds in the first instance in one or more banks or trust companies, in one or more special accounts, each continuously secured in the manner required for public funds of the Commonwealth. All banks and trust companies are authorized to give the security required. The moneys of the agency shall be paid out on the warrant or other order of the treasurer of the agency or of another person authorized by the agency to execute warrants or orders.

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 the administrative costs of the agency. All moneys received by the agency from nursing 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 206. Agency Audits and Reports.—(a) The fiscal year of the Nursing Home Loan Agency shall be from July 1 through June 30 of the succeeding year.

(b) Ninety days prior to the end of the fiscal year, the Nursing Home Loan Agency shall file a financial statement including revenues, expenditures, status of outstanding obligations and a report on the operation of the agency with the Governor, Auditor General and the General Assembly.

(c) The accounts, books and records of the agency, including receipts, disbursements, contracts, mortgages and other financial records shall be audited and examined from time to time by the Auditor General as provided for in The Administrative Code of 1929.

Section 207. Continuing Appropriation to the Agency.—The net proceeds of the sale of the obligations herein authorized, after reserving and paying the issuing expenses, are hereby appropriated from the Nursing Home Loan Development Fund for transfer to the agency and deposit in the Nursing Home Loan Fund for the purpose of carrying out

the provisions of this act. Said moneys are to be transferred to the agency in accordance with section 405 of this act.

ARTICLE III

Nursing Home Loans

Section 301. Qualification of Applicants.—All nursing homes meeting applicable State and Federal regulations, with the exception of Life Safety Code, for the acceptance of Medicaid patients shall be eligible to apply for loans from the Nursing Home Loan Agency under provisions of this act.

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.

(2) An approved plan of correction of Life Safety Code deficiencies 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.

(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 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 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 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' 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 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 for care of medical assistance patients.

Section 303. Priorities Among Applicants.—In the event the loan application requests exceed the loan moneys available the agency shall after advice from and consultation with the Department of Health establish criteria for the making of loans and determine priorities among applicants. The criteria shall include but not be limited to:

(1) The existing ratio of nursing home beds per one thousand persons sixty-five years of age and over in the county in which the applicant home is located and/or will serve.

(2) The projected growth rate of persons sixty-five years of age and over between 1974 and 1980 in the county in which the applicant home is located and/or will serve.

(3) The current rate of construction of new nursing home beds within the region, as determined by the Department of Health, and in which the applicant home is located and/or will serve.

(4) A reasonable ratio of medical assistance patients.

Section 304. Loan Refinancing.—(a) The agency may utilize for refinancing loans, as provided in this section, any funds remaining in the agency's appropriation under section 207 of this act, nine months after enactment of this act, and which funds are not already committed for specific loans.

(b) A nursing home may apply to the agency for a loan to refinance any outstanding debt to the extent such debt was incurred by the nursing home after July 1, 1972 for the purpose of repairs, rehabilitation or reconstruction required to meet governmental safety standards.

(c) The agency may set limits on the amount or proportion of a nursing home's debt to be refinanced in order to extend such loan refinancing to the greatest possible number of nursing homes.

(d) Eligibility for loan refinancing shall be based upon standards established by the agency. The agency shall require such security, assurances, covenants and conditions as it deems necessary and shall have all powers of enforcement necessary to carry out the purposes or provisions of this act.

Section 305. Credit of the Commonwealth or any Subdivision Thereof not Pledged.—Actions and commitments of the agency shall not be deemed to constitute debts of the Commonwealth or of any political subdivision thereof or pledges of the faith and credit of the Commonwealth or of any such political subdivision.

ARTICLE IV General Obligation Bonds

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, 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 402. Bonds, Issue, Maturity, Interest, Etc.—(a) As evidence of the indebtedness herein authorized, general obligation bonds of the Commonwealth of Pennsylvania shall be issued from time to time for such total amounts, in such form, in such denominations, and subject to such terms and conditions of issue, redemption and maturity, rate of interest, and time of payment of interest, as the Governor, Auditor General and State Treasurer shall direct, except that the latest stated maturity date shall not exceed thirty years from the date of the bond first issued for each such series.

(b) All bonds issued under the authority of this act shall bear facsimile signatures of the Governor, Auditor General and State Treasurer, and a facsimile of the great seal of the Commonwealth of Pennsylvania, and shall be countersigned by two duly authorized officers of the duly authorized loan and transfer agents of the Commonwealth.

(c) All bonds issued in accordance with the provisions of this act shall be direct obligations of the Commonwealth of Pennsylvania, and the full faith and credit of the Commonwealth are hereby pledged for the payment of the interest thereon as the same shall become due and the payment of the principal thereof at maturity. All bonds issued under the

provisions of this act shall be exempt from taxation for State and local purposes. The principal of and interest on such bonds shall be payable in lawful money of the United States of America.

(d) Such bonds may be issued as coupon bonds or registered as to both principal and interest as the issuing officials may determine. If interest coupons are attached, they shall contain the facsimile signature of the State Treasurer.

(e) The issuing officials shall provide for the amortization of the bonds in substantial and regular amounts over the term of the debt: Provided, That the first retirement of principal shall be stated to mature prior to the expiration of a period of time equal to one-tenth of the time from the date of the first obligation issue to evidence such debt to the date of the expiration of the term of the debt. Retirements of principal shall be regular and substantial if made in annual or semi-annual amounts whether by stated serial maturities or by mandatory sinking fund retirements computed in accordance with either a level annual debt service plan, as nearly as may be, or upon the equal annual maturities plan.

Section 403. Sale of Bonds.—(a) Whenever bonds are so issued, they shall be offered for sale at not less than ninety-eight per cent (98%) of the principal amount and accrued interest and shall be sold by the Governor, the Auditor General and State Treasurer to the highest and best bidder or bidders after due public advertisement, on such terms and conditions and upon such open competitive bidding, as the Governor, Auditor General and State Treasurer shall direct. The manner and character of such advertisement and the time of advertising shall be prescribed by the issuing officials.

(b) Any portion of any bond issue so offered and not sold or subscribed for may be disposed of by private sale by the Governor, the Auditor General, and the State Treasurer, in such manner and at such prices, not less than ninety-eight per cent (98%) of the principal amount and accrued interest, as the Governor shall direct. No commission shall be allowed or paid for the sale of any bonds issued under the authority of this act.

(c) When bonds are issued from time to time, the bonds of each issue shall constitute a separate series to be designated by the issuing officials or may be combined for sale as one series with other general obligation bonds of the Commonwealth.

(d) Until permanent bonds can be prepared, the issuing officials may in their discretion issue in lieu of such permanent bonds, temporary bonds in such form and with such privileges as to registration and exchange for permanent bonds as may be determined by the issuing officials.

Section 404. Refunding Bonds.—The Governor, Auditor General and the State Treasurer are hereby authorized to provide, by resolution, for the issuance of refunding bonds for the purpose of refunding any

bonds issued under the provisions of this act and then outstanding, either by voluntary exchange with the holders of such outstanding bonds, or to provide funds to redeem and retire such outstanding bonds with accrued interest and any premium payable thereon, at maturity or at any call date. The issuance of such refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the Governor, Auditor General and the State Treasurer in respect to the same, shall be governed by the foregoing provisions of this act, in so far as the same may be applicable. Refunding bonds may be issued by the Governor, Auditor General and the State Treasurer to refund bonds originally issued or to refund bonds previously issued for refunding purposes.

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 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.

(b) Pending their application to the purposes authorized, moneys held or deposited by the State Treasurer may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of such funds shall be paid into the State treasury to the credit of the Nursing Home Loan Sinking Fund.

Section 406. Registration of Bonds.—The Auditor General shall prepare the necessary registry book to be kept in the office of the duly authorized loan and transfer agent of the Commonwealth for the registration of any bonds, at the request of owners thereof, according to the terms and conditions of issue directed by the Governor, Auditor General and the State Treasurer.

Section 407. Reporting Requirements.—The State Treasurer shall determine and report to the Budget Secretary by November of each year the amount of money necessary for the payment of interest on outstanding obligations and the principal of such obligations, if any, for the following fiscal year and the times and amounts of such payments. It shall be the duty of the Governor to include in every budget submitted to the General Assembly, full information relating to the issuance of bonds under the provisions of this article, and the status of the sinking fund of the Commonwealth for the payment of the interest on said bonds and the principal thereof at maturity.

Section 408. (a) Nursing Home Loan Sinking Fund; Investments.—All bonds issued under the authority of this article shall

be redeemed at maturity and all interest due from time to time on such bonds shall be paid from the Nursing Home Loan Sinking Fund, which is hereby created. For the specific purpose of redeeming said bonds at maturity and paying all interest thereon in accordance with the information received from the Governor, the General Assembly shall appropriate moneys to the Nursing Home Loan Sinking Fund for the payment of interest on said bonds and the principal thereof at maturity. All moneys paid into the Nursing Home Loan Sinking Fund, and all of such moneys not necessary to pay accruing interest shall be invested by the Board of Finance and Revenue in such securities as are provided by law for the investment of the sinking funds of the Commonwealth.

(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 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 409. Quorum.—Whenever in this article any action is to be taken or decision made by the Governor, the Auditor General and the State Treasurer, and the three officers shall not be able unanimously to agree, the action or decision of the Governor and either the Auditor General or State Treasurer shall be binding and final.

Section 410. Expenses of Preparation, Issue and Sale of Bonds.—There is hereby appropriated to the State Treasurer from the proceeds of the bonds issued as much moneys as may be necessary for all costs and expenses in connection with the issue of and sale and registration of said bonds in connection with this act.

Section 411. Nursing Home Loan Sinking Fund.—The General Assembly shall appropriate an amount equal to moneys received from the agency pursuant to section 204 and such other moneys as may be necessary to meet repayment obligations for principal and interest into the Nursing Home Loan Sinking Fund.

ARTICLE V

Severability Clause and Effective Date

Section 501. Severability Clause.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such

invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 502. Appropriations.—There is hereby appropriated five hundred thousand dollars (\$500,000) from the General Fund to the Nursing Home Loan Fund for the sole purpose of payment of administrative costs arising from the implementation of this act.

Section 503. Effective Date.—This act shall take effect immediately.

APPROVED—The 22nd day of July, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 207.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large, prominent initial "C".

Secretary of the Commonwealth.