

No. 1992-182

AN ACT

HB 2344

Amending the act of December 3, 1959 (P.L.1688, No.621), entitled, as amended, "An act to promote the health, safety and welfare of the people of the Commonwealth by broadening the market for housing for persons and families of low and moderate income and alleviating shortages thereof, and by assisting in the provision of housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency as a public corporation and government instrumentality; providing for the organization, membership and administration of the agency, prescribing its general powers and duties and the manner in which its funds are kept and audited, empowering the agency to make housing loans to qualified mortgagors upon the security of insured and uninsured mortgages, defining qualified mortgagors and providing for priorities among tenants in certain instances, prescribing interest rates and other terms of housing loans, permitting the agency to acquire real or personal property, permitting the agency to make agreements with financial institutions and Federal agencies, providing for the purchase by persons of low and moderate income of housing units, and approving the sale of housing units, permitting the agency to sell housing loans, providing for the promulgation of regulations and forms by the agency, prescribing penalties for furnishing false information, empowering the agency to borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security therefor, permitting the refunding, redemption and purchase of such obligations by the agency, prescribing remedies of holders of such bonds and notes, exempting bonds and notes of the agency, the income therefrom, and the income and revenues of the agency from taxation, except transfer, death and gift taxes; making such bonds and notes legal investments for certain purposes; and indicating how the act shall become effective," further providing for the membership of the agency and the powers of the agency, for use of nondistributed profits, for nondiscrimination, for making and purchasing loans and mortgages, for allocation of loans, for qualified bonds and notes and for eligibility; further providing for the Homeowners' Emergency Mortgage Assistance Program; and repealing certain provisions relating to expiration of act.

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

Section 1. Section 102(7) of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, amended December 5, 1972 (P.L.1259, No.282), is amended to read:

Section 102. Findings and Declaration of Policy.—It is hereby determined and declared as a matter of legislative finding that—

* * *

(7) Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of its inhabitants by the creation of a body corporate and politic, to be known as the "Pennsylvania Housing Finance Agency," which shall exist and operate for the purposes of alleviating the hardship which results from insufficient production of private homes and of rental housing for persons and families of low and moderate income, including the elderly, the hardship resulting from

the relocation of persons displaced by governmental action, the deleterious effect of inadequate housing upon the general welfare of the Commonwealth, and the disadvantages, resulting from economic conditions, which bar private industry from satisfying a vital need, by broadening the market for private homes and for housing for persons and families of low and moderate income, including the elderly, through the provision of specialized financing secured by mortgages to corporations, individuals, joint ventures, partnerships, limited partnerships, trusts, cooperatives and condominiums, which are unable to obtain such financing in the general market or who are unable to participate in specialized Federal housing programs because of lack of available Federal funds, and through cooperation with and assistance to the Pennsylvania Department of Community Affairs as such department carries into effect the powers and duties vested in it, thus improving and stimulating the distribution of investment capital for housing *and neighborhood revitalization projects*. Such purposes are public purposes for which public money may be spent.

Section 2. Section 202 of the act, amended December 16, 1986 (P.L.1666, No.189), is amended to read:

Section 202. Agency Membership.—The members of the agency shall be the Secretary of Community Affairs, the State Treasurer, the Secretary of Commerce and the Secretary of Banking, and the respective successors in office of each of them **[and six], one member appointed by the Majority Leader of the Senate, one member appointed by the Minority Leader of the Senate, one member appointed by the Majority Leader of the House of Representatives, one member appointed by the Minority Leader of the House of Representatives and six** additional members whom the Governor shall appoint. One of the members of the agency appointed by the Governor with the advice and consent of the Senate shall be a representative of a community-based nonprofit group which assists low-income and moderate-income individuals in housing matters. Annually at the first meeting held during the calendar year, the members shall elect one of the members to serve as chairperson. The members initially appointed shall serve for terms of one, two, three, four, five and six years, respectively, the particular term of each to be designated by the Governor at the time of appointment. The terms of all their successors shall be six 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 and qualified. Any appointment *made by the Governor* of a member of the agency made hereafter shall be subject to the advice and consent of a majority of all the members of the Senate. Any appointed member of the agency shall be eligible for reappointment. 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. A member who fails to attend meetings for three consecutive months shall forfeit his seat unless the chairperson of the agency, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family

member. *Members appointed by the Majority Leader of the Senate, the Minority Leader of the Senate, the Majority Leader of the House of Representatives and the Minority Leader of the House of Representatives shall not be, themselves, current members of the General Assembly and shall serve at the pleasure of the appointing authority.*

Section 3. Section 205(7) of the act, amended December 5, 1972 (P.L.1259, No.282), is amended and the section is amended by adding clauses to read:

Section 205. Agency Powers.—The agency shall have the following powers:

* * *

(7) In accordance with the provisions of this act, *or in conjunction with Federal law or a Federal program*, to make commitments to purchase and to purchase, service and sell mortgages, and to make loans directly upon the security of mortgages.

* * *

(20) *To invest in, pledge capital to, lease, own, manage or develop housing projects and programs in the furtherance of the purposes set forth in this act, individually, as a shareholder, stockholder, partner, equity participant or joint venturer.*

(21) *To form corporations under the not-for-profit laws of this Commonwealth for the purpose of owning or developing low-income and moderate-income housing and housing for persons with disabilities, the elderly or other persons with special needs. Any such corporation shall be subject to the same oversight and auditing requirements which are applicable to the agency under this act.*

Section 4. Section 207 of the act is amended to read:

Section 207. Agency Audits and Reports.—The accounts and books of the agency, including its receipts, disbursements, contracts, mortgages, investments and other matters relating to its finances, operations and affairs, shall be examined and audited from time to time by the Auditor General as provided in The Fiscal Code. Within sixty days after the end of each fiscal year of the agency, *or as soon thereafter as practical*, the agency shall file an annual financial statement consisting at least of a balance sheet, profit-and-loss statement and general report of operations with the Governor, the Auditor General and the General Assembly.

Section 5. Section 402-A(d) and (f) of the act, added December 5, 1972 (P.L.1259, No.282), are amended to read:

Section 402-A. Mortgage Loans.—* * *

(d) Use of Nondistributed Profits. Whenever a mortgagor accumulates earned surplus in addition to such reserves for replacement as the agency may require, in excess of ten per cent of the current annual rent roll for the project, *the agency may require* rents in the project [shall] *to* be reduced to the extent necessary to lower the earned surplus accumulation to such ten per cent figure in the following fiscal year.

* * *

(f) Nondiscrimination. The agency shall require that occupancy of all housing financed or otherwise assisted under this act be open to all persons regardless of race, national origin, religion, *gender, handicap or disability, familial status* or creed, *subject only to such exceptions allowable by law*, and that mortgagors, contractors and subcontractors engaged in the construction, rehabilitation, sale or rental of such housing, shall provide equal opportunity for employment without discrimination as to race, national origin, religion, *gender, handicap or disability, familial status* or creed, *subject only to such exceptions allowable by law*.

* * *

Section 6. Sections 401-B and 402-B of the act, added December 31, 1981 (P.L.594, No.176), are amended to read:

Section 401-B. General Statement.—The agency is hereby authorized to make or purchase loans or mortgages by contract with lending institutions to finance the purchase, construction, improvement or rehabilitation of owner-occupied single-family residences pursuant to the provisions of the Mortgage Subsidy Bond Tax Act of 1980 (Public Law 96-499) *or any Federal tax legislation or program which may be a successor to the act or which may be similar to the act*. The agency may acquire, and contract and enter into advance commitments to acquire by assignment or otherwise, loans secured by insurance or by mortgages owned by lending institutions or participations therein at such purchase price and upon such other terms as the agency shall determine. The agency may make and execute contracts with lending institutions for the origination and servicing of such loans and pay the value of services rendered under such contracts.

Section 402-B. Allocation of Loans.—(a) The agency shall geographically allocate the proceeds of any qualified mortgage bond issue, authorized by section 501-A.1, in the following manner:

(1) Fifty (50) percent of the proceeds shall be allocated among municipalities, except for municipalities electing local issuance pursuant to section 501-A.1, in a manner reasonably proportional to the distribution of the population of housing units.

(2) Fifty (50) percent of the proceeds shall be allocated among municipalities, except for municipalities electing local issuance pursuant to section 501-A.1, in a manner reasonably proportional to the distribution of the market value of residential property.

(3) Municipalities to which proceeds shall be allocated include counties, groups of counties, and cities of fifty thousand (50,000) or greater population.

(4) Municipalities electing local issuance pursuant to section 501-A.1, shall be allocated a portion of the State ceiling for aggregate annual issuance, determined pursuant to the Mortgage Subsidy Bond Tax Act of 1980, equivalent to the portion of the proceeds of any qualified mortgage bond issue which would be allocated to such municipalities, under this section, if they did not elect local issuance: Provided, That any municipality which issued mortgage subsidy bonds prior to January 1, 1981 shall be allocated a portion of the State ceiling in an amount as described herein, or in an amount at least

equal to the average yearly amount of mortgage subsidy bonds issued in the municipality during the three (3) years immediately prior to the enactment of this act, whichever is greater. The annual ceilings for municipalities electing local issuance shall be recommended by the agency and proclaimed by the Governor which allocations may be amended from time to time.

(5) If six (6) months following issuance of any qualified mortgage bonds, the agency determines that it cannot distribute the proceeds in the manner set forth in this subsection, the agency may reallocate the proceeds in a manner designed to meet State housing policy objectives.

(6) If six (6) months after the amount allocation the agency determines a reallocation would better achieve State housing policy objectives, the agency may recommend and the Governor may proclaim an amended allocation plan.

(b) The agency shall annually, by resolution adopted by the board, allocate the aggregate borrowing authority assigned to the agency pursuant to the Mortgage Subsidy Bond Tax Act of 1980, into the following categories of loans:

(1) Sixty (60) percent of the allocation shall be used to purchase mortgages for newly constructed homes and existing homes.

(2) Thirty-five (35) percent of the allocation shall be used to purchase mortgages to rehabilitate residences or for home improvement loans which qualify for FHA Title I insurance or successor programs or for home improvement loans which are authorized to be made by Pennsylvania regulated financial institutions.

(3) Five (5) percent of the allocation shall be used for home energy efficiency improvement loans which qualify for FHA Title I insurance or successor programs including, but not limited to, solar hot water heating and home weatherization. The distribution of proceeds into these categories need not be made separately for each municipality allocated loans pursuant to this section.

(c) The agency shall develop appropriate standards and procedures to ensure that all loans made with the proceeds of any qualified mortgage bond issued by the agency are made in a manner which encourages community conservation and promotes local land use planning objectives.

(d) The agency shall develop appropriate standards and procedures to implement the targeted area requirements of the Mortgage Subsidy Bond Tax Act of 1980.

(e) The agency shall specify standards, criteria and procedures to be employed in selecting eligible mortgagors for loans made with the proceeds of any qualified mortgage bond issued by the agency.

(f) The agency may enter into agreements with county or city housing authorities, residential finance authorities, redevelopment authorities, or other suitable governmental entities to assist in the administration of this article with respect to loans allocated to the municipality within the jurisdiction of the authority or governmental entity.

(g) The agency and any municipality electing local issuance shall contract with lending institutions to make loans with the proceeds of qualified mort-

gage bonds. The agency and any municipality electing local issuance may acquire and contract and enter into advance commitments to acquire by assignment or otherwise, loans secured by insurance or by mortgages made or owned by lending institutions or participations therein. The agency and any municipality electing local issuance shall make and execute contracts with lending institutions for the origination and servicing of such loans and pay the value of services rendered under such contracts.] (a) *The agency shall geographically allocate the proceeds of any qualified mortgage bond issue in accordance with rules and regulations promulgated by the agency. Such rules shall be designed to encourage maximum use and equitable distribution of proceeds of bond issues throughout this Commonwealth.*

(b) *The agency shall develop appropriate standards and procedures to implement the targeted area requirements of any relevant Federal tax or Federal housing legislation.*

(c) *The agency shall specify standards, criteria and procedures to be employed in selecting eligible mortgagors for loans made with the proceeds of any qualified mortgage bond issued by the agency.*

(d) *The agency may enter into agreements with county or city housing authorities, residential finance authorities, redevelopment authorities or other suitable governmental entities to assist in the administration of this article with respect to loans allocated to the municipality within the jurisdiction of the authority or governmental entity.*

(e) *The agency and any municipality engaging in local issuance, as authorized by section 501-A, may contract with lending institutions to make loans with the proceeds of qualified mortgage bonds. The agency and any municipality electing local issuance may acquire and contract and enter into advance commitments to acquire by assignment or otherwise, loans secured by insurance or by mortgages made or owned by lending institutions or participations therein. The agency and any municipality electing local issuance may make and execute contracts with lending institutions for the origination and servicing of such loans and pay the value of services rendered under such contracts.*

Section 7. Section 401-C(a) of the act is amended by adding a clause to read:

Section 401-C. General Authority.—(a) The Pennsylvania Housing Finance Agency, hereinafter referred to as the “agency,” may make loans secured by liens on residential real property located in Pennsylvania to residents of Pennsylvania eligible for such loans as described in this article. For the purpose of this article, the term “mortgage” shall include any obligation evidenced by a security document and secured by a lien upon real property located within this Commonwealth including, but not limited to, a deed of trust and land sale agreement. The term shall also include an obligation evidenced by a security lien on real property upon which an owner-occupied mobile home is located. The provisions of this article shall not be applicable if:

* * *

(5) *The mortgagor is more than thirty-six (36) months delinquent or in default for more than thirty-six (36) months, pursuant to the terms of mortgagor's residential mortgage. This requirement shall mean that if the mortgagor is more than thirty-six (36) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefor, the agency shall not be authorized to make any loans hereunder to such mortgagor.*

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Section 8. Section 403-C of the act is amended by adding a subsection to read:

Section 403-C. Notice Requirements.—* * *

(f) *Notwithstanding any other provisions of this section, a mortgagee shall not be required to send the uniform notice provided in subsection (b) to any mortgagor who is more than thirty-six (36) months delinquent or in default for more than thirty-six (36) months, pursuant to the terms of mortgagor's residential mortgage with mortgagee. This requirement shall mean that if the mortgagor is more than thirty-six (36) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefor, he shall be ineligible to receive the notice in subsection (b).*

Section 9. Section 404-C(b) of the act, added December 23, 1983 (P.L.385, No.91), is amended and subsection (a) is amended by adding a clause to read:

Section 404-C. Eligibility for Assistance.—(a) No assistance may be made with respect to a mortgage under this article unless all of the following are established:

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(12) *The mortgagor is not more than thirty-six (36) months delinquent or in default for more than thirty-six (36) months pursuant to the terms of mortgagor's residential mortgage. This requirement shall mean that if the mortgagor is more than thirty-six (36) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefor, he shall be ineligible for assistance.*

(b) Upon a determination that the conditions of eligibility described in subsection (a) have been met by a mortgagor and money is available in the Homeowner's Emergency Mortgage Assistance Fund, the mortgagor shall become eligible for the assistance described in section 405-C. If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (a), the mortgagor shall be prohibited from reapplying for assistance under this article for a period of **[six (6)] twenty-four (24)** months from the date of such determination unless there is a material change in circumstances: Provided, however, That nothing in this subsection shall prohibit any mortgagee from commencing legal action to enforce the mortgage without any further restriction or requirement under this article whenever the agency determines that the mortgagor is ineligible for assistance as provided in this section.

Section 10. Section 409-C of the act, added December 23, 1983 (P.L.385, No.91), is amended to read:

Section 409-C. **Insufficient Funds.**—The provisions of this article shall not be applicable to any mortgage which becomes delinquent at any time when the agency *has officially declared that it* does not have money currently available in the Homeowner's Emergency Mortgage Assistance Fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. The State Treasurer shall have the duty to advise the agency not less frequently than once each calendar quarter of the amount available for the purposes of this article. *The agency shall be deemed to have insufficient money currently available in the Homeowner's Emergency Mortgage Assistance Fund if at any time the money available in the fund is projected by the agency to be insufficient during the next sixty (60) days to pay out on new applications which have been or are expected (based at least on the previous twelve (12) month loan approval history) to be approved during said period and to continue making disbursements on behalf of mortgagors previously approved.* In the event that the funds available to the agency in the Homeowner's Emergency Mortgage Assistance Fund for purposes of this article become insufficient [to approve application for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved] *as officially declared by the executive director of the agency at least sixty (60) days prior to the funds being depleted,* the agency shall immediately publish an announcement to that effect [and] *in the Pennsylvania Bulletin, which announcement shall include a date certain which shall be at least ninety (90) days after said announcement after which* mortgages shall no longer be subject to the provisions of this article and mortgages may, at any time [thereafter] *after the published date,* take legal action to enforce the mortgage without any further restriction or requirement under this article. *In the event that funds are replenished in sufficient amount by an appropriation or otherwise, the agency shall publish a similar notice, which shall be effective immediately, announcing that fact and mortgages shall again be subject to this article.*

Section 11. Section 411-C of the act is repealed.

Section 12. Section 501-A.1 of the act, added December 31, 1981 (P.L.594, No.176), is amended to read:

Section 501-A.1. **Qualified [Mortgage] Housing Bonds.**—(a) The agency shall have the power and is hereby authorized from time to time by resolution of the members, and subject to the written approval by the Governor, to issue qualified [mortgage] housing bonds and notes, pursuant to the Mortgage Subsidy Bond Tax Act of 1980, and subsequent amendments, *or any Federal tax legislation or program which authorizes Federal tax exemption for bonds issued to provide housing. The agency may issue such bonds or notes* in such principal amounts, as [is] permitted by Federal law *and the act of December 20, 1985 (P.L.483, No.113), known as the "Tax-Exempt Bond Allocation Act,"* and [is] *as are* in the opinion of the agency, necessary to provide sufficient funds for the Owner Occupied Residential Mortgage

Program authorized by Article IV.-B and the Rental Housing Program authorized by Article IV.-A. These bonds and notes shall be issued, to the extent permitted by [the Mortgage Subsidy Bond Tax Act of 1980] *Federal law*, in conformity with all other provisions of Article V.-A.

(b) In determining the limitation on the aggregate amount of qualified [mortgage] *housing* bonds issued during any calendar year, [as provided by section 103(g) of the Mortgage Subsidy Bond Tax Act of 1980] *which are eligible for exemption from Federal taxation under Federal law*, the total State ceiling shall be completely allocated to the agency for its programs under Article IV.-B, except for amounts allocated to municipalities electing local issuance.

(c) [Mortgage] *Qualified housing* bonds may be locally issued by election of any of the following entities [upon notification to the agency] *which may apply to the agency for the allocation of local authority for the purpose of issuing housing bonds subject to annual volume cap*:

(1) Cities of the first, second and second class A and cities of the third class with a population of fifty thousand (50,000) or greater.

(2) Counties of the second class.

(3) Any other municipality which by itself or through an authority prior to January 1, 1981, issued mortgage subsidy bonds.

(4) Any county or city housing authorities, redevelopment authorities or residential finance authorities within the jurisdiction of any of the above and with the approval of the incorporating municipality.

[The municipality] (d) *A qualified entity* authorized to issue bonds hereunder may use any part or all of its allocation hereunder by designating an authority in clause (4) of subsection (c) as its agent for a mortgage program. An election for local issuance may be made by any other municipality, upon recommendation of the agency and with the approval of the Governor, if the agency determines that local issuance will result in loans being made at rates significantly lower than those available from the agency, or will result in substantial reductions in administrative costs, or will allow more effective integration of State, Federal and local housing assistance programs, not available through cooperation with the agency. A municipality electing local issuance may issue amounts equal to the portion of the State ceiling allocated to the municipality by the agency and the Governor pursuant to section 402-B. If in the judgment of the agency, it will not issue bonds in the total amount available to it in any calendar year as prescribed in subsection (b), any excess availability within the State ceiling may be reallocated by resolution adopted by the agency board to any of the entities authorized to issue mortgage bonds under this act.

Section 13. This act shall take effect immediately.

APPROVED—The 18th day of December, A. D. 1992.

ROBERT P. CASEY