

CHAPTER 98

AN ACT concerning the New Jersey Health Care Facilities Financing Authority and amending and supplementing P.L.1972, c.29.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1972, c.29 (C.26:2I-1) is amended to read as follows:

C.26:2I-1 Declaration of serious public emergency relative to health care facilities.

1. It is hereby declared that a serious public emergency exists affecting the health, safety and welfare of the people of the State resulting from the fact that many health care facilities throughout the State are no longer adequate to meet the needs of modern health care. Inadequate and outmoded facilities deny to the people of the State the benefits of health care of the highest quality, efficiently and promptly provided at a reasonable cost. As a result, health care providers are restructuring their organizations, facilities and operations in order to develop integrated health care delivery systems capable of providing a full range of health care services in the most cost-effective manner.

It is the purpose of this act to ensure that all health care institutions have access to financial resources to improve the health and welfare of the citizens of the State. It is hereby declared to be the policy of the State to encourage the provision of modern, well-equipped health care facilities, and such provision is hereby declared to be a public use and purpose.

It is also the purpose of this act to provide assistance in the restructuring of the health care system of the State and to aid in the termination of the provision of hospital acute care services at such locations as may no longer be useful or necessary for this purpose.

2. Section 3 of P.L.1972, c.29 (C.26:2I-3) is amended to read as follows:

C.26:2I-3 Terms defined.

3. As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

"Authority" means the New Jersey Health Care Facilities Financing Authority created by this act or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this act shall be given by law.

"Bond" means bonds, notes or other evidences of indebtedness of the authority issued pursuant to this act.

"Commissioner" means the Commissioner of Health and Senior Services.

"Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, interest exchange agreement, insurance contract, surety bond, commitment to purchase bonds, purchase or sale agreement, or commitment or other contract or agreement authorized and approved by the authority in connection with the authorization, issuance, security or payment of bonds.

"Health care organization" means an organization located in this State which is authorized or permitted by law, whether directly or indirectly through a holding corporation, partnership or other entity, to provide health care-related services, including, but not limited to, hospital, outpatient, public health, home health care, residential care, assisted living, hospice, health maintenance organization, blood bank, alcohol or drug abuse, half-way house, diagnostic, treatment, rehabilitation, extended care, skilled nursing care, nursing care, intermediate care, tuberculosis care, chronic disease care, maternity, mental health, boarding or sheltered care or day care, services provided by a physician in his office, or any other service offered in connection with health care services or by an entity affiliated with a health care organization or an integrated delivery system.

"Hospital asset transformation program" means the hospital asset transformation program established pursuant to subsection g. of section 7 of P.L.1972, c.29 (C.26:2I-7).

"Integrated delivery system" means a group of legally affiliated health care organizations.

"Public health care organization" means a State, county or municipal health care organization.

"Project" or "health care organization project" means the acquisition, construction, improvement, renovation or rehabilitation of lands, buildings, fixtures, equipment and articles of personal property, or other tangible or intangible assets that are necessary or useful in the

development, establishment or operation of a health care organization pursuant to this act, and "project" or "health care organization project" may include: the financing, refinancing or consolidation of secured or unsecured debt, borrowings or obligations, or the provision of financing for any other expense incurred in the ordinary course of business, all of which lands, buildings, fixtures, equipment and articles of personal property are to be used or occupied by any person in the health care organization; the acquisition of an entity interest, including capital stock, in a corporation; or any combination thereof; and may include any combination of the foregoing undertaken jointly by any health care organization with one or more other health care organizations.

"Project cost" or "health care organization project cost" means the sum total of all or any part of costs incurred or estimated to be incurred by the authority or by a health care organization which are reasonable and necessary for carrying out all works and undertakings and providing all necessary equipment for the development of a project, exclusive of the amount of any private or federal, State or local financial assistance for and received by a health care organization for the payment of such project cost. Such costs shall include, but are not necessarily limited to: interest prior to, during and for a reasonable period after such development; start-up costs and costs of operation and maintenance during the construction period and for a reasonable additional period thereafter; organization, administration, operation and other expenses of the health care organization prior to and during construction; the cost of necessary studies, surveys, plans and specifications, architectural, engineering, legal or other special services; the cost of acquisition of land, buildings and improvements thereon (including payments for the relocation of persons displaced by such acquisition), site preparation and development, construction, reconstruction, equipment, including fixtures, equipment, and cost of demolition and removal, and articles of personal property required; the reasonable cost of financing incurred by a health care organization or the authority in the course of the development of the project; reserves for debt service; the fees imposed upon a health care organization by the commissioner and by the authority; other fees charged, and necessary expenses incurred in connection with the initial occupancy of the project; and the cost of such other items as may be reasonable and necessary for the development of a project; as well as provision or reserves for working capital, operating or maintenance or replacement expenses, or for payment or security of principal of, or interest on, bonds.

3. Section 5 of P.L.1972, c.29 (C.26:2I-5) is amended to read as follows:

C.26:2I-5 Powers of authority.

5. Powers of authority. The authority shall have power:
- a. To adopt bylaws for the regulation of its affairs and the conduct of its business and to alter and revise such bylaws from time to time at its discretion.
 - b. To adopt and have an official seal and alter the same at pleasure.
 - c. To maintain an office at such place or places within the State as it may designate.
 - d. To sue and be sued in its own name.
 - e. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof as provided in this act.
 - f. To acquire, lease as lessee or lessor, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this act.
 - g. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, any land or interest therein and other property which it may determine is reasonably necessary for any project; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes, for fair consideration after public notice.
 - h. To receive and accept, from any federal or other public agency or governmental entity directly or through the Department of Health and Senior Services or any other agency of the State or any health care organization, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied

only for the purposes for which such grants, loans and contributions may be made.

i. To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of health care organization projects for health care organizations under the provisions of this act, and from time to time to modify such plans, specifications, designs or estimates.

j. By contract or contracts with and for health care organizations only, to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip health care organization projects. The authority, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing rules and procedures providing that, except as hereinafter provided, no contract on behalf of the authority shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of \$7,500.00 or the amount determined as provided in this subsection, unless the authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing of services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any such products to be supplied or services to be rendered are filed with said board. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of each odd-numbered year, adjust the threshold amount set forth in this subsection, or subsequent to 1985 the threshold amount resulting from any adjustment under this subsection or section 17 of P.L.1985, c.469, in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor. The Governor shall, no later than June 1 of each odd-numbered year, notify the authority of the adjustment. The adjustment shall become effective July 1 of each odd-numbered year.

k. To determine the location and character of any project to be undertaken, subject to the provisions of this act, and subject to State health and environmental laws, to construct, reconstruct, maintain, repair, lease as lessee or lessor, and regulate the same and operate the same in the event of default by a health care organization of its obligations and agreements with the authority; to enter into contracts for any or all such purposes; and to enter into contracts for the management and operation of a project in the event of default as herein provided. The authority shall use its best efforts to conclude its position as an operator as herein provided as soon as is practicable.

l. To establish rules and regulations for the use of a project or any portion thereof and to designate a health care organization as its agent to establish rules and regulations for the use of a project undertaken by such a health care organization.

m. Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof.

n. To enter into agreements, credit agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act.

o. To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by resolution of the authority.

p. To obtain, or aid in obtaining, from any department or agency of the United States any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any loan or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this act; and notwithstanding any other provisions of this act, to enter into agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee, and accept payment in such manner and form as provided therein in the event of default by the borrower.

q. To obtain from any department or agency of the United States or a private insurance company any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds issued by the authority pursuant to the provisions of this act; and notwithstanding any other provisions of this act, to enter into any agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee, except to the extent that such action would in any way impair or interfere with the authority's ability to perform and fulfill the terms of any agreement made with the holders of the bonds of the authority.

r. To receive and accept, from any department or agency of the United States or of the State or from any other entity, any grant, appropriation or other moneys to be used for or applied to any corporate purpose of the authority, including without limitation the meeting of debt service obligations of the authority in respect of its bonds.

s. Subject to the approval of the State Treasurer, to grant or loan all or any portion of the funds received pursuant to subsection g. of section 7 of P.L.1972, c.29 (C.26:2I-7) in connection with the hospital asset transformation program.

4. Section 7 of P.L.1972, c.29 (C.26:2I-7) is amended to read as follows:

C.26:2I-7 Issuance of bonds authorized; maturity; terms.

7. a. The authority is authorized from time to time to issue its bonds for any corporate purpose and to fund and refund the same all as provided in this act. Such bonds may, at the discretion of the authority, be designated as "bonds," "notes," "bond anticipation notes" or otherwise.

b. Except as may otherwise be expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable from any revenues or moneys of the authority, subject only to any agreements with the holders of particular bonds pledging any particular revenues or moneys. Notwithstanding that bonds may be payable from a special fund, they shall be fully negotiable within the meaning of Title 12A, the Uniform Commercial Code, of the New Jersey Statutes, subject only to any provisions of the bonds for registration.

c. The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

d. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

(i) pledging all or any part of the revenues of a project or any revenue producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

(ii) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(iii) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(iv) limitations on the right of the authority or its agent to restrict and regulate the use of a project;

(v) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds;

(vii) 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;

(viii) limitations on the amount of moneys derived from a project to be expended for operating, administrative or other expenses of the authority; and

(ix) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

e. Neither the members of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

f. The authority shall have power out of any funds available therefor to purchase its bonds. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

g. (1) There is established a hospital asset transformation program in the authority for the purpose of providing financial assistance by the authority to nonprofit hospitals in this State, from funds received pursuant to and in accordance with the provisions of this subsection, in connection with the termination of the provision of hospital acute care services at a specific location that may no longer be necessary or useful for this purpose.

(2) Subject to the approval of the State Treasurer, the authority shall have the power to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by monies received pursuant to subsection a. of section 6 of P.L.2000, c.98 (C.26:2I-7.1), in order to satisfy the outstanding bonded indebtedness of any nonprofit hospital in the State in connection with the hospital asset transformation program. The authority may establish reserves or other funds to further secure these bonds or refunding bonds.

(3) The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued pursuant to this subsection, pledge the contract with the State Treasurer provided for in subsection b. of section 6 of P.L.2000, c.98 (C.26:2I-7.1), or any part thereof, for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payments of bonds and refunding bonds. Subject to the approval of the State Treasurer, the authority may pay the costs associated with the issuance of bonds or refunding bonds by the authority for the purposes of this subsection from amounts it receives from the proceeds of the bonds or refunding bonds and from amounts it receives pursuant to subsection a. of section 6 of P.L.2000, c.98 (C.26:2I-7.1), which costs may include, but are not limited to, any costs relating to the issuance of the bonds or refunding bonds and costs attributable to any agreements securing, or providing for the payment of, these bonds or refunding bonds. The authority is authorized to enter into any agreement necessary or desirable to effectuate the purposes of this subsection, including an agreement to sell bonds or refunding bonds to any person and to comply with the laws of any jurisdiction relating thereto.

5. Section 30 of P.L.1972, c.29 (C.26:2I-30) is amended to read as follows:

C.26:2I-30 Power of health care organization to mortgage, pledge property, income.

30. For the purpose of obtaining and securing loans under section 29 of P.L.1972, c.29 (C.26:2I-29) or subsection s. of section 5 of P.L.1972, c.29 (C.26:2I-5), every health care organization shall have power to mortgage and pledge any of its real or personal property, and to pledge any of its income from whatever source to repay the principal of and interest on any loan made to it by the authority or to pay the interest on and principal and redemption premium, if any, of any bond or other evidence of indebtedness evidencing the debt created by any such loan; provided that the foregoing shall not be construed to authorize actions in conflict with specific legislation, trusts, endowment, or other agreements relating to specific properties or funds.

C.26:2I-7.1 Payments, contracts to implement payment, for hospital asset transformation program.

6. a. In each fiscal year, the State Treasurer shall pay from the General Fund to the authority, in accordance with a contract between the State Treasurer and the authority as provided in subsection b. of this section, an amount equivalent to the amount due to be paid in that fiscal year for the debt service on the bonds or refunding bonds issued by the authority pursuant to subsection g. of section 7 of P.L.1972, c.29 (C.26:2I-7) and any additional costs as authorized pursuant thereto, including any agreement securing or providing for the payment of the bonds or refunding bonds.

b. The State Treasurer and the authority are authorized to enter into one or more contracts to implement the payment arrangement provided for in subsection a. of this section. The contract shall provide for payment by the State Treasurer of the amounts required to be paid pursuant to subsection a. of this section and shall set forth the procedure for the transfer of monies for the purpose of making that payment. The contract shall contain such terms as are determined by the State Treasurer and the authority and shall include, but not be limited to, terms and conditions necessary and desirable to secure any bonds or refunding bonds issued by the authority pursuant to subsection g. of section 7 of P.L.1972, c.29 (C.26:2I-7); except that, notwithstanding any provision of any law, rule or regulation to the contrary, the State Treasurer shall pay the authority only such amounts as shall be determined by the contract and the incurrence of any obligation of the State under the contract, including any payment to be made from the General Fund pursuant thereto, shall be subject to and dependent upon appropriations made by the Legislature for the purposes of this section.

7. This act shall take effect immediately.

Approved August 29, 2000.