

SECTION 2. Said Chapter 40D is hereby further amended by adding after section 21, a new section 22 to read as follows: —

Section 22. (a) A municipality acting by and through an authority may finance pollution control facilities in the same manner provided by this chapter for industrial development facilities, in which event all provisions of this chapter which are applicable to industrial development facilities and to projects and industrial occupants shall apply to the pollution control facilities and the lessees thereof insofar as such provisions are apt, except as otherwise hereinafter provided.

(b) The requirements of clauses (e), (g), (i), and (k) of subsection (2) of section twelve shall not apply to projects for pollution control. It shall be necessary, however, that the state industrial finance board find that such a project will alleviate unemployment or the threat thereof in the municipality or provide security against future unemployment and lack of business opportunity in the municipality; that a substantial public benefit will result from the project and, in the case of pollution control facilities for water, the division of water pollution control in the department of natural resources; or, in the case of pollution control facilities for air, the commissioner of public health, has found that the project as designed is in furtherance of the purpose of abating or controlling water pollution or air pollution, as the case may be.

SECTION 3. Said chapter 40D is hereby further amended by adding after section 22 the following section: —

Section 23. A municipality acting by and through an authority in connection with a project for pollution control facilities financed or to be financed under this chapter may apply for and accept and use any grant, loan, or grant and loan of federal or state funds for such pollution control facilities.

Approved July 17, 1972.

Chap. 776. AN ACT ESTABLISHING PROCEDURES FOR THE DETERMINATION BY THE DEPARTMENT OF PUBLIC HEALTH OF THE NEED TO EXPAND CERTAIN HEALTH CARE FACILITIES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is, in part, to provide forthwith for the appropriate allocation of certain resources for the provision of health care services in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health, safety and convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section 165 the following section: —

Section 166. There shall be within the executive office of human services a health facilities appeals board, hereinafter called the board, which shall make determinations on appeals filed pursuant to section twenty-five E of chapter one hundred and eleven. The board shall consist of five persons to be appointed for terms of three years by the governor, at least three of whom shall be consumers of health care services who are not officers or employees of, and do not bear any fiduciary relationship to a person or institution providing health care services. One such consumer member shall be a member of the bar of

the commonwealth and shall be designated by the governor to serve as chairman of the board. Persons appointed to the board shall be knowledgeable in matters pertaining to the delivery of health care services; and the governor, in making said appointments, shall consider any persons recommended to him for such purpose by the comprehensive health planning agencies established pursuant to sections three hundred and fourteen (a) and three hundred and fourteen (b) of the Federal Public Health Service Act.

Each member of the board shall be paid fifty dollars for each day spent in the performance of his duty, not to exceed six thousand dollars in any fiscal year, and shall be reimbursed for expenses actually and necessarily incurred in the discharge of his duties.

The board, subject to appropriation, may employ such persons, none of whom shall be subject to the provisions of chapter thirty-one or section nine A of chapter thirty, as may be required to discharge its responsibilities. Such persons may include, without limitation, hearing officers and persons experienced in serving as masters and auditors in the supreme judicial and superior courts.

SECTION 2. Section 16 of chapter 6A of the General Laws, inserted by section 3 of chapter 704 of the acts of 1969, is hereby amended by inserting after the words "health and welfare commission";, in lines 21 and 22, the words: — health facilities appeals board;

SECTION 2A. Section 3 of chapter 17 of the General Laws, as most recently amended by section 38 of chapter 801 of the acts of 1963, is hereby further amended by striking out the first sentence and inserting in place thereof the following four sentences: — The public health council shall consist of the commissioner of public health as chairman and eight members appointed by the governor. Three of the appointed members shall be providers of health services, of whom two shall be physicians. Five of the appointed members shall be non-providers. For the purposes of this section "nonprovider" shall mean a person whose background and experience indicate that he is qualified to act in the board public interest, who, and whose spouse, parents, siblings or children, has no financial interest in a health care facility, who, and whose spouse, has no employment relationship to a health care facility, to a nonprofit service corporation established in accordance with chapters one hundred and seventy-six A to one hundred and seventy-six E, inclusive, nor to a corporation authorized to insure the health of individuals, and who, and whose spouse, is not licensed to practice medicine.

SECTION 3. Chapter 111 of the General Laws is hereby amended by inserting after section 25A the following six sections: —

Section 25B. In this section and sections twenty-five C to twenty-five G, inclusive, the following words shall have the following meanings: —

"Appropriate regional comprehensive health planning agency," the regional agency designated pursuant to the provisions of section three hundred and fourteen (b) the Federal Public Health Service Act, which has geographical jurisdiction of the area served by a health care facility.

"Construction", construction of a new health care facility; the alteration of, expansion of, making of major repairs to, remodeling of, renovation of or replacement of an existing health care facility; the initial, additional or replacement equipping of any such facility; the acquisition of consulting, architectural, and engineering services, and of site, when such acquisition is directed toward an undertaking sufficiently specific

to constitute part the subject matter of an application for determination of need under section twenty-five C.

"Department", the department of public health; provided, however, that no member of the public health council who is an owner, in whole or in part, an officer or an employee of a health care facility, or who bears any other fiduciary relationship to such a facility, shall participate in any decision which would substantially affect the facility to which he is related.

"Health care facility", a hospital, institution for the care of unwed mothers or clinic, as defined in section fifty-two; a long-term care facility, which is an infirmary maintained in a town, a convalescent or nursing home, a rest home or a charitable home for the aged, as defined in section seventy-one; a public medical institution, which is any medical institution, and, after December first, nineteen hundred and seventy-two, any institution for the mentally ill or retarded, supported in whole or in part by public funds, staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing, approval or certification for participation in the programs administered under Titles 18 and 19 of the Federal Social Security Act, by the department; and any part of such facilities; provided, however, that "health care facility" shall not include a facility operated by a religious group relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

"State comprehensive health planning agency", the agency designated pursuant to the provisions of section three hundred fourteen (a) of the Federal Public Health Service Act.

"Substantial capital expenditure", the expenditure of a sum of money, including an expenditure for the lease of capital equipment at the purchase value of such equipment, for construction of a health care facility which exceeds, or may reasonably be regarded as leading to an expenditure for construction in excess of, one hundred thousand dollars for an undertaking sufficiently specific to constitute the subject matter of an application for determination of need under section twenty-five C.

"Substantial change in services", a change in kind, rather than degree, of service as further defined by the department; provided, however, that any increase in bed capacity of more than four beds shall be a substantial change in service; and, provided further, that any decrease in the level of service offered by a nursing, convalescent or rest home, and any change in service provided by a hospital to persons who are not admitted as inpatients, which does not involve a substantial capital expenditure shall not be subject to the provisions of sections twenty-five C to twenty-five G, inclusive.

Section 25C. Notwithstanding any contrary provision of law, no person or agency of the commonwealth or any political subdivision thereof shall make substantial capital expenditures for construction of a health care facility or substantially change the services of such a facility unless there is a determination by the department that there is need therefor.

The department, in making any such determination, shall encourage appropriate allocation of private and public health care resources and the development of alternative or substitute methods of delivering

health care services so that adequate health care services will be made reasonably available to every person within the commonwealth at the lowest reasonable aggregate cost.

Applications for such determination shall be filed with the department, together with such other forms and information as shall be prescribed by, or acceptable to, the department. A duplicate copy of such application, together with supporting documentation therefor, shall be a public record and kept on file in the department. The department may require a public hearing on any such application. A reasonable fee, established by the department, shall be paid upon the filing of such application; provided, that in no event shall such fee exceed one tenth of one per cent of the capital expenditures, if any, proposed by the applicant.

Except in the case of an emergency situation determined by the department as requiring immediate action to prevent further damage to the public health or to a health care facility, the department shall not act upon an application for such determination unless (a) the application has been on file with the department for at least thirty days, (b) the state and appropriate regional comprehensive health planning agencies have been provided copies of such application and supporting documents and given reasonable opportunity to comment thereon, and (c) a public hearing has been held thereon when requested by the applicant, the state or appropriate regional comprehensive health planning agency, or any ten taxpayers of the commonwealth. The department may establish filing periods for such applications; and in such event shall not act only upon an individual application filed during such a period when such action would implicitly decide any other application filed during such period.

The department shall approve or disapprove, in whole or in part, or otherwise act upon every such application in a timely manner, but in any event within one hundred and twenty days after filing. Such determinations of need shall be made in writing, setting forth the reasons therefor, and, when any such determination is inconsistent with specific recommendations filed in a timely manner with the department by any person or group empowered to request a public hearing by clause (c) of the preceding paragraph, shall specifically discuss such inconsistent reasons. Every determination of need and the reasons therefor shall constitute a public record and be filed in the department.

The department shall stipulate the period during which a determination of need shall remain in effect, which in no event shall originally be longer than three years but which may be extended by the department for cause shown. Any such determination shall continue to be effective only upon the applicant (a) making reasonable progress toward completing the construction or substantial change in services for which need was determined to exist, (b) complying with all other provisions of law relating to the construction, licensure, and operation of health care facilities, and (c) complying with such further terms and conditions as the department reasonably shall require.

Section 25D. Every person, at least thirty days prior to making a public solicitation of funds or otherwise securing financing for construction of a health care facility or a substantial change in the services of a facility, shall file written notice of his intent to do so with the department. In the case of a solicitation of funds from the general public, the

department may require such person to file an application for a determination of need for such construction or substantial change in services and to postpone any such public solicitation of funds until such application has been acted upon by the department and such need has been found to exist; provided, however, that failure of the department to comment upon a notice of intent shall not be construed to constitute a determination that such need exists. Nothing in this section shall be construed to prohibit any person or agency subject to sections twenty-five C to twenty-five G, inclusive, from accepting gifts, and the provisions of this section shall not apply to any such solicitation or securing of financing where the undertaking to be funded is not sufficiently specific to constitute the subject matter of an application for determination of need under section twenty-five C.

Each agency of the commonwealth and its political subdivisions desiring to make substantial capital expenditure for construction of a health care facility or to substantially change the services of such a facility shall make application for determination of need therefor pursuant to section twenty-five C, and the department shall transmit a report of its determination thereon to the agencies empowered to recommend and to make appropriations of money for the applicant agency.

Section 25E. Any person or agency filing an application for determination of need or empowered to request a public hearing under the provisions of section twenty-five C, and aggrieved by the determination thereof may, within fourteen days after such determination, file an appeal to the health facilities appeals board established by section one hundred and sixty-six of chapter six. The appellant shall include with any such appeal a certificate stating that said appeal is not knowingly interposed for delay.

The board in considering any such appeal shall restrict itself to a review of materials on file with the department and to consideration of whether the determination appealed from was an abuse of discretion, without observance of procedure required by law or in violation of applicable provisions of law. In the event the board determines that the materials available to it are inadequate to allow the required consideration, it may order a hearing on the appeal. Such appeal shall be heard by the board or its designated hearing officer within thirty days after its filing. If the matter is heard by a hearing officer, such officer, within thirty days after hearing, shall submit a recommended decision, reasons therefor and a determination of each issue of fact or law incident to said recommended decision to the board. The board shall, within sixty days after filing of the appeal, issue a final decision, either denying the appeal, in which case said decision shall be subject to judicial review under the provisions of section fourteen of chapter thirty A to the extent they are not inconsistent with the provisions of this section, or order the matter remanded to the department for action consistent with the opinion of the board. All proceedings of the board shall be subject to the provisions of chapter thirty A to the extent they are not inconsistent with the provisions of this section.

Section 25F. The department and the health facilities appeals board are hereby authorized and directed to promulgate rules and regulations necessary for the implementation of sections twenty-five C to twenty-five G, inclusive.

Section 25G. The superior and supreme judicial courts shall have jurisdiction, upon request of the department, the appropriate regional comprehensive health planning agency, or of any ten taxpayers in the commonwealth to enforce the provisions of sections twenty-five C to twenty-five G, inclusive. Any violation of such provisions also shall constitute grounds for refusing to grant or renew, modifying or revoking the license of a health care facility or of any part thereof.

SECTION 4. All proceedings related to applications for determinations of need filed pursuant to chapter one thousand and eighty of the acts of nineteen hundred and seventy-one and pending before the department of public health immediately prior to the expiration date of said chapter shall, on the effective date of this act, continue unabated and be deemed to be commenced under and pending before said department under the provisions of sections twenty-five B to twenty-five G, inclusive, of chapter one hundred eleven of the General Laws, inserted by section three of this act; provided, however, that any such proceeding which relates to a transfer of ownership and does not involve a substantial capital expenditure or a substantial change in services as defined in said section twenty-five B, shall terminate on the expiration date of said chapter one thousand and eighty. All determinations of need granted and actions taken by said department under the provisions of said chapter one thousand and eighty shall remain in full force and effect and be deemed to be granted or taken under the provisions of said sections twenty-five B to twenty-five G, inclusive. Health care facility construction which was not subject to said chapter one thousand and eighty and was commenced prior to the effective date of this act may be completed without any determination of need therefor; provided, however, that any substantial capital expenditure for construction beyond the scope of the construction so commenced and any substantial change in services beyond the scope of those services, provision for which was made in said construction, shall be subject to the provisions of said sections twenty-five B to twenty-five G, inclusive, as so inserted. For the purposes of this section, substantial capital expenditure and substantial change in services shall be defined as in said section twenty-five B, as so inserted. Notwithstanding any other provision of this act, all such determinations and actions taken by said department under an instruction issued to said department by the governor on June seventh, nineteen hundred and seventy-two, to continue to accept and process applications for such determinations as if said chapter one thousand eighty had continued in effect beyond that date on which it had ceased to be effective, are hereby ratified and confirmed and shall remain in full force and effect.

SECTION 5. The first two members of the board established by section one hundred sixty-six of chapter six of the General Laws, inserted by section one of this act, shall be appointed for a term of one year, the third and fourth members for a term of two years, and the fifth member for a term of three years.

SECTION 5A. All members of the public health council, established by section three of chapter seventeen of the General Laws, as amended by section two A of this act, immediately prior to the effective date of this act shall continue in office for the remainder of their respective terms. The public health council, as redefined by said section two A, shall be deemed a continuation of said council as it existed immediately

prior to the effective date of this act. Of the two members added to the public health council by said section two A, one shall be appointed for a term of three years and one shall be appointed for a term of six years.

SECTION 6. This act shall take effect as of June first, nineteen hundred and seventy-two.

Approved July 18, 1972.

Chap. 777. AN ACT RELATIVE TO THE ADMINISTRATION AND OPERATION OF CORRECTIONAL INSTITUTIONS AND FACILITIES IN THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. Section 2 of chapter 27 of the General Laws is hereby amended by striking the first paragraph, as most recently amended by section 37 of chapter 300 of the acts of 1971, and inserting in place thereof the following paragraph: —

The commissioner shall, with the approval of the governor, appoint and may, with like approval, remove a deputy commissioner for institutional services, a deputy commissioner for classification and treatment, a deputy commissioner for personnel and training, and a deputy commissioner for community services, each of whom shall receive a salary of nineteen thousand five hundred and four dollars and each shall devote his full time during business hours to the duties of his office. All such deputy commissioners shall possess qualifications of character and ability similar to that required of the commissioner, and shall have had training and experience in work generally similar to those required of the commissioner or otherwise suitably preparing them for the work of their respective offices. They shall not be subject to the provisions of section nine A and nine B of chapter thirty, or chapter thirty-one. The commissioner may designate any deputy commissioner to discharge the duties of the commissioner during his absence or disability.

SECTION 2. The first paragraph of section 5 of said chapter 27, as appearing in section 2 of chapter 765 of the acts of 1960, is hereby amended by inserting after the word "commissioner", in line 32, the words: — ; (h) employ subject to appropriation and the requirements of chapter thirty and chapter thirty-one an executive secretary and such hearing officers, clerks, attorneys, and other employees and consultants as the work of the parole board may require.

SECTION 3. Chapter 30A of the General Laws is hereby amended by inserting after section 1 the following section: —

Section 1A. The department of correction shall be subject to sections one through eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said department from the definition of the word "agency" in section one.

SECTION 4. Chapter 111 of the General Laws is hereby amended by striking section 20, as most recently amended by chapter 76 of the acts of 1947, and inserting in place thereof the following section: —

Section 20. At least twice each year the department shall inspect each correctional institution, as defined in section one of chapter one hundred and twenty-five, and shall file a report of its findings and recommendations with respect to each such facility with the department of correction, the secretary of human services, the superintendent or administrator of each such facility, and the general court.