

SENATE No. 637

By Mr. King, a petition (accompanied by bill, Senate, No. 637) of John G. King for legislation to provide for a means of financing for long-term care facilities. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-one.

AN ACT TO PROVIDE A MEANS OF FINANCING FOR LONG-TERM CARE FACILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 708 of the Acts of 1966 is hereby amended by in-

2 serting at the appropriate place the following new section: —

3 *Section 13C. Long Term Care Facility Program — (a)*

4 *Public Necessity and Purpose — A serious shortage of safe,*

5 *sanitary, well-designed and appropriately managed long-term*

6 *care facilities, for elderly and infirm persons who often have*

7 *limited incomes and who need combined lodging, board and*

8 *nursing or other supportive services, exists in many areas of*

9 *the commonwealth. Many elderly persons in particular do*

10 *not require hospitalization but are unable to live indepen-*

11 *dently in the community and, therefore, need the services of*

12 *such a facility. The shortage of long-term care facilities has*

13 *forced some of these persons to remain in facilities which do*

14 *not meet governmental requirements for averting fire dis-*

15 *asters or which otherwise are unsuitable, or in hospitals or*

16 *private residences where the level of medical and nursing*

17 *care and the living situation provided are inappropriate to*

18 *bolster their well-being. Inappropriate retention of such per-*

19 *sons in hospitals also is a misuse of hospital beds, is unneces-*

20 *sarily expensive and results in increased costs to the common-*

21 *wealth and the federal government of medical assistance pro-*

22 *grams.*

23 *The shortage of long-term care facilities has been aggra-*

24 *vated by insufficient availability of financing upon reasonable*

25 *terms for the construction or renovation of such facilities. In*

26 addition, high interest rates for the financing of such facili-
27 ties are absorbed to a large degree by the commonwealth and
28 the federal government as part of the high costs of medical
29 assistance programs. Private enterprise has not been able to
30 solve unaided either these financing problems or the long-term
31 care problems which have been aggravated thereby.

32 The provision of suitable and appropriate long-term care
33 for elderly and infirm persons deserves high priority. The
34 importance of such efforts will increase as the elderly become
35 a larger proportion of the commonwealth's population. Fi-
36 nancially acceptable approaches which promise to address
37 this need effectively, particularly including promising innova-
38 tive approaches for the provision of long-term care facilities,
39 should be undertaken.

40 Accordingly, the purposes of this section are to facilitate
41 the delivery of more suitable and appropriate long-term care
42 for elderly and infirm persons, particularly those with limited
43 incomes, and to reduce unnecessary public long-term care
44 expenditures, by providing a source of low-cost financing for
45 the construction, rehabilitation, renovation or refinancing of
46 long-term care facilities. Provision of financing to individ-
47 uals or entities organized or operating for profit, as well as
48 non-profit entities, is authorized to encourage both more ex-
49 peditious or more complete accomplishment of the purposes
50 of this section and diverse or innovative methods of accom-
51 plishing such purposes. The general court hereby determines
52 that the program authorized by this section promises to serve
53 a valid and important public purpose.

54 (b) Definitions — As used in this section, unless a con-
55 trary intent is clearly indicated: —

56 (1) the terms "long-term care facility" or "facility" shall
57 mean a structure or portion thereof, and the equipment in-
58 cidental thereto, which is or shall be designed and maintained
59 to provide accommodations and supportive services, including
60 nursing, convalescent care, other health-related or supervisory
61 services, to persons who need such accommodations and serv-
62 ices;

63 (2) the term "facility project" shall mean construction,

64 rehabilitation, renovation or refinancing of a long-term care
65 facility which is financed pursuant to this section;

66 (3) the term "facility project costs" shall mean reasonable
67 costs incurred in connection with a facility project as deter-
68 mined by the MHFA, which may include construction costs
69 including job overhead and a builder's and sponsor's profit
70 and risk fee, the cost of equipment and personal property
71 which is necessary for the operation of the facility, archi-
72 tectural, engineering, legal and accounting costs, organiza-
73 tional expenses, the cost of feasibility studies or other special
74 services, working capital sufficient to meet needs of the fa-
75 cility during a period of partial occupancy immediately after
76 construction, operating reserves, replacement reserves, land
77 value, interest and financing charges paid during construction
78 or to be paid during a period of partial occupancy immedi-
79 ately after construction, the cost of landscaping and offsite
80 improvements, refinancing costs and the cost of such other
81 items as the MHFA may determine to be appropriate, whether
82 or not such costs have been paid in cash or in a form other
83 than cash; and

84 (4) the term "program" shall mean the activities author-
85 ized by this section.

86 (c) Authorization — In addition to and in conjunction with
87 its other powers, the MHFA may make or finance mortgage
88 loans, including mortgage loans insured by the secretary of
89 housing and urban development, to sponsors of long-term care
90 facilities which, in the judgment of the MHFA, have promise
91 of supplying a well-planned, well-designed facility with suit-
92 able patient or resident care and services. Such mortgage
93 loans may include construction loans and permanent loans
94 for the construction, rehabilitation, renovation or refinancing
95 of a long-term care facility, as the MHFA deems appropriate.
96 The MHFA may purchase or sell or participate in the pur-
97 chase or sale of securities which are secured by such mort-
98 gages. The provisions of section 5(b) and section 5(c) shall
99 be applicable to this section, provided that the MHFA only
100 shall make or finance loans to persons or entities organized
101 or operating for profit subject to the requirements of sub-

102 section (e) of this section.

103 (d) Nonprofit Sponsors — The MHFA may make or fi-
104 nance loans of the types authorized by subsection (c) to non-
105 profit sponsors. The ratio of loan to facility value and amor-
106 tization period of any such loans which are insured by FHA
107 shall be governed by the applicable FHA mortgage commit-
108 ment, except that the amortization period of all loans made or
109 financed pursuant to this paragraph shall not exceed fifty
110 years. The amount of any such loan which is not insured by
111 FHA shall not exceed 100 percent of facility project costs.

112 (e) Entities Organized for Profit — The MHFA may make
113 or finance loans of the types authorized by subsection (c) to
114 individuals or entities organized or operating for profit. The
115 ratio of loan to facility value and the amortization period of
116 any such loans which are insured by FHA shall be governed
117 by the applicable FHA mortgage commitment, except that
118 the amortization period of any loan made or financed pursu-
119 ant to this paragraph shall not exceed fifty years. In the case
120 of a mortgage loan not insured by FHA, the amount of such
121 loan may not exceed 90 percent of facility project costs. A
122 mortgagor may not make distributions in any one year with
123 respect to a facility project for which construction or reha-
124 bilitation was financed pursuant to this paragraph in excess
125 of a specified percentage of the mortgagor's equity, as such
126 term is defined by the MHFA by regulation for the purposes
127 of the program, in the facility project. The MHFA shall, pur-
128 suant to regulations adopted by it, establish the mortgagor's
129 equity at the time of the making of the final mortgage ad-
130 vance and for the purposes of this paragraph, that figure shall
131 remain constant during the life of the MHFA's mortgage on
132 the facility project. The specified percentage shall not ex-
133 ceed the percentage determined by the MHFA to be necessary
134 to encourage construction and appropriate operation of long-
135 term care facilities.

136 (f) Regulation — Any long-term care facility financed un-
137 der the program and the services provided by such a facility
138 shall be available primarily for persons (1) who will be oc-
139 cupants of the facility and whose probable annual incomes do

140 not exceed two times the average annual charges to be paid
141 by such persons, or four times such charges in the case of
142 persons who primarily will receive supervisory care, or (2)
143 who will not be occupants of the facility and whose probable
144 annual incomes do not exceed two times the average annual
145 charges to be paid by occupants of the facility. Any such
146 facility shall rent at least twenty-five percent of its capacity
147 at all times to low income persons or families. In addition
148 to such other regulation of mortgagors as the MHFA may
149 impose, the MHFA shall approve (1) rates charged to patients
150 of such facilities, (2) use of capital contributions made by
151 partners, stockholders or other individuals or entities with
152 ownership interests in the facility, in accordance with any
153 appropriate restrictions on or requirements for use of such
154 contributions which the MHFA may impose by regulation,
155 and (3) prepayment of any loan made or financed pursuant
156 to this section, provided that the MHFA need not allow such
157 prepayments and shall not allow any such prepayment which
158 would be inconsistent with the purposes or requirements of
159 the program. Whenever a mortgagor accumulates surplus
160 funds in addition to such reserves as the MHFA may require,
161 the mortgagor shall use such surplus funds to improve the
162 facility, reduce indebtedness or offset immediate reductions
163 in rates to patients, as the MHFA directs. Except as pro-
164 vided herein, the requirements of section 5 and of section 7
165 shall not be applicable to the program. The MHFA may make
166 and publish rules and regulations regarding the subject mat-
167 ter of such sections, or regarding any other appropriate mat-
168 ter, in furtherance of the purposes of the program.

169 (g) Relationship with Other Agencies — Notwithstanding
170 any other provision of law, the MHFA and other agencies
171 of the commonwealth whose activities affect the construc-
172 tion, operation or financial stability of long-term care facili-
173 ties, including but not limited to the Department of Public
174 Welfare, the Department of Public Health and the Rate Set-
175 ting Commission, are directed, to the extent practicable, to
176 enter into agreements which enhance the security for notes
177 or bonds issued hereunder or which otherwise improve the
178 efficiency, effectiveness or administration of the program.

179 Such agreements may include, but are not limited to, an
180 agreement with the Department of Public Welfare which as-
181 sures or facilitates timely payment of amounts owed by the
182 government to mortgagors on behalf of publicly aided pa-
183 tients or residents, an agreement with the Department of
184 Public Welfare which provides that amounts owed by the
185 government to mortgagors on behalf of publicly aided pa-
186 tients or residents shall not be made available to mortgagors
187 while such mortgagors are delinquent in their obligations to
188 the MHFA, and an agreement with the Rate Setting Com-
189 mission which assures that the method of reimbursement for
190 accommodations and services provided to publicly aided pa-
191 tients at facilities financed under the program will facilitate
192 satisfaction by mortgagors of their payment obligations to
193 the MHFA. The MHFA shall have the right to participate
194 in any proceedings of the Rate Setting Commission or of other
195 agencies which relate to a facility that is or may be financed
196 by it, and in administrative or judicial review of such pro-
197 ceedings, to the same extent and on the same terms as the
198 sponsor of such facility could participate. The Rate Setting
199 Commission and other agencies shall give utmost considera-
200 tion to any positions taken or representations or requests
201 made by the MHFA.

202 (h) Findings — Prior to making or financing a loan com-
203 mitment under this section, the MHFA shall find that (1) the
204 mortgagor has complied with determination of need require-
205 ments as provided in sections twenty-five B to twenty-five G
206 of chapter one hundred and eleven of the General Laws, (2)
207 the construction, rehabilitation, renovation or refinancing to
208 be undertaken with the proceeds of such loan would help to
209 accomplish the purposes of this section, (3) the plans and
210 specifications for the facility's construction conform to all
211 applicable laws and regulations and are otherwise satisfac-
212 tory, (4) the agreement made with other agencies pursuant
213 to subsection (g) of this section are sufficient to protect the
214 interests of the MHFA, and (5) the estimated revenue of the
215 project, as approved by the Rate Setting Commission to the
216 extent applicable, will be sufficient to cover all probable costs
217 of fixed charges, operation and maintenance and any re-

218 quired reserves.

219 (i) Bonds Notes and Working Capital — The MHFA may
220 issue its notes and books in furtherance of the purposes of
221 the program, provided that the aggregate principal amount
222 of such notes and bonds outstanding at any one time shall
223 not exceed the sum of \$50 million. Except as provided herein,
224 such aggregate principal amount of notes and bonds out-
225 standing shall be calculated in the same manner as the ag-
226 gregate principal amount of notes and bonds outstanding is
227 calculated for purposes of the sixth sentence of section 8(b).
228 Notwithstanding the provision of section 9B, the MHFA may
229 issue notes and bonds pursuant to this section for which a
230 Capital Reserve Fund is not created and the provisions of
231 such section 9B do not apply. Such notes and bonds shall
232 not be considered for purposes of application of the limita-
233 tion in the sixth sentence of section 8(b). To provide addi-
234 tional security for the notes and bonds authorized to be is-
235 sued by this section, the sum of \$3 million is hereby appro-
236 priated from the General Fund of the commonwealth. Such
237 sum, and any interest or other income earned thereon, shall
238 be used for the same purposes as a Capital Reserve Fund
239 would be used if such sum were not available. The MHFA
240 shall repay such sum, and any interest or income earned there-
241 on to the commonwealth as soon as practicable and consistent
242 with the terms and conditions the MHFA sets forth in any
243 applicable resolution authorizing the issuance of notes or
244 bonds pursuant to this section.

245 (j) Special Advisory Committee — To assist the MHFA
246 in the discharge of its duties pursuant to this section, there
247 is hereby created a special advisory committee composed of
248 the commissioner of public welfare, the commissioner of pub-
249 lic health, the chairman of the rate setting commission and
250 the secretary of elder affairs, or the designated representa-
251 tives of such persons, and five other interested citizens of
252 the commonwealth appointed by the governor, including per-
253 sons with experience or training in the development of long-
254 term care facilities, the administration of such facilities, the
255 concerns and problems of occupants of such facilities and
256 other relevant fields. The special advisory committee shall

257 assist the MHFA in formulating policies and procedures for
258 accomplishment of the purposes of this section and shall
259 monitor the progress of the program. Members of the spe-
260 cial advisory committee shall receive no compensation for
261 this assistance. They shall not be subject to the provisions of
262 chapter thirty-one or chapter two hundred and sixty-eight
263 A.

264 (k) Report — Not later than January 1, 1982, the MHFA
265 shall submit to the governor, the chairman of the senate ways
266 and means committee, the chairman of the house ways and
267 means committee, the secretary of administration and finance
268 and the comptroller a comprehensive report of its activi-
269 ties pursuant to this section. Such report shall include the
270 MHFA's recommendations with respect to (1) the desirabil-
271 ity of continuation of the program, (2) the desirability of
272 continued administration of the program by the MHFA, or
273 alternatively by some other agency or entity of the com-
274 monwealth, and (3) any other legislative or administrative
275 changes which should be made if the program is continued.
276 Such report also shall include any observations or recom-
277 mendations regarding the program which are provided by
278 the special advisory committee or any individual member
279 thereof.