STATE OF NEW YORK

4935

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to establishing the New York state senior housing opportunities partnership act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The elder law is amended by adding a new section 209-a to read as follows:

§ 209-a. The New York state senior housing opportunities partnership act. 1. Short title. This section shall be known and may be cited as the "New York state senior housing opportunities partnership act".

2. Definitions. As used in this section:

a. "Authority" means the New York state senior housing opportunities partnership authority created by this section.

b. "Bank" means any banking organization defined by section two of the banking law that has a market capitalization (determined by multiplying the number of shares times the current market price), of less than two billion dollars.

c. "Senior" means a person who is sixty years of age or older who is the head of a household. Any other provision of any other law to the contrary notwithstanding, including any provision of article fifteen of the executive law, it shall not be unlawful to restrict rental, sale or lease of a senior housing project financed in whole or in part by the authority exclusively to persons sixty years of age or older and the spouse of any such person.

d. "Senior housing opportunities development corporation" means any person, individual, firm, partnership, association, or other entity or collaboration of entities organized or existing under the laws of the state or any other state, domestic or foreign, exclusive of a state agency, undertaking the construction of a senior housing facility.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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e. "Senior housing opportunities partnership financing instrument" means any financing instrument, including a bank loan, bonds and notes, or credit enhancement issued or purchased by or on behalf of a senior housing opportunities development corporation for a senior housing opportunities facility.

f. "Senior housing opportunities facility" means any structure, improvement, furnishing, equipment or other real or personal property that is or is to be used, owned or occupied in whole or in excess of fifty percent by housing for seniors, whether as rental or owner-occupied housing. Senior housing facility means and includes, but is not limited to naturally occurring retirement communities (as defined in section two hundred nine of this title, or any successor thereto), market-rate independent living, adult home (as defined in section two of the social services law), as well as any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the senior facility. For purposes of this section, owner-occupied means and includes any provision or instrument that allows a senior to own or to eventually own their living unit such that it becomes an owner-occupied living unit, including through such means as direct purchase, reverse-mortgage, lease-to-own, subsidized mortgage, or any similar provision allowing for transfer of title of the living unit to a senior; owner-occupied living unit means and includes any unit which is or will upon completion or shortly thereafter be occupied by the purchasing senior, including condominium or cooperative units. Notwithstanding any implication of the foregoing, senior housing facility shall be deemed to mean and include scattered site housing, or housing units scattered throughout a neighborhood or an area which is broadly defined by traditional neighborhood or community boundaries, and where appropriate, bounded by major natural or man-made physical boundaries, such as bodies of water, railroad lines, or limited access highways.

g. "Senior housing opportunities facility project" means a project to construct a senior housing opportunities facility, including all buildings, systems, facilities, appurtenances, machinery and equipment which the authority deems necessary for the operation of the project.

h. "Project" means and includes the site or sites for a senior housing opportunities facility project, which may be composed of non-contiguous parcels, together with all property, rights, easements and interests, on or off such site or sites, which may be required for the operation of the project.

i. "Activities in a project which may be financed by the authority" means all activities necessary to the successful development and placing in operation of the project, including but not limited to the costs of:

(1) construction of the project;

(2) acquisition of property, both real and personal and improved and unimproved;

(3) demolishing, removing or relocating buildings or structures on lands acquired, including acquisition of any lands to which such buildings or structures may be moved or relocated;

(4) systems, facilities, machinery and equipment;

(5) financing charges, interest prior to and during construction;

(6) professional services, including engineering and architectural services, plans and specifications, consultants' and legal services, lease guarantee or bond insurance, fiscal and economic investigations, studies, surveys, designs, plans, drawings, specifications, procedures,

and other such similar activities related thereto, regardless of when completed, as well as the costs of a project manager or clerk-of-the-works or other such similar personnel;

(7) all or part of the initial operational expenses, provided these do not exceed two years duration;

(8) development, contingency, and other financial plan costs; and

(9) any other expenses necessary or incidental to the construction of such project and the financing of its construction.

j. "Real property" means and includes lands, structures, franchises and interests in land, waters, lands under water, riparian rights and air-rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

k. "State agency" means any officer, authority, corporation, department, board, commission, bureau, division, public benefit corporation, council, agency or instrumentality of the state.

3. New York state senior housing opportunities partnership authority. a. The New York state senior housing opportunities partnership authority is hereby created as a body corporate and politic constituting a public benefit authority. Its purpose shall be to finance or collaborate in the financing of senior housing opportunities facility projects for or on behalf of senior housing opportunities development corporations, as provided in this section. The authority may make loans or provide credit for loans which may be secured by mortgage, contracts, or provide other financing instruments to senior housing opportunities development corporations in accordance with the provisions of this article. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this section.

b. Membership of the authority shall consist of seven directors, of whom six shall be appointed by the governor by and with the advice and consent of the senate, two of whom shall be so appointed on recommendation of the temporary president of the senate, and two on recommendation of the speaker of the assembly. Each director shall at the time of appointment have had at least five years experience in finance, as an officer in an entity in which he or she served as a banker or investment banker, and/or as a developer of senior housing or other projects for seniors with a development cost in excess of five million dollars. Directors shall serve for terms of six years each, provided, however, that of the directors first appointed, two shall serve for terms of two years, two for terms of four years and two for terms of six years, respectively, from January first next succeeding their appointment. Any vacancy occurring otherwise than by expiration of term shall be filled in the same manner as the original appointment for the balance of the unexpired term. The director of the office for the aging shall serve as ex officio member with the same rights and duties as other members, and shall also be the chair of the authority and chief executive officer of the authority, and shall appoint such vice-chairman as he or she deems appropriate. Directors of the authority shall continue in office until their successors are appointed and shall have qualified. A director, on his or her initiative, may acquire by loaned employee from the office for the aging, through the powers provided him or her, no more than two

officers and employees, plus administrative-secretarial support staff as required, the duties and work of whom are hereby declared to be an essential state purpose, and who shall suffer no diminution of their compensation or benefits as result of such assignment, provided that no such transfer be made except with the approval of the director of the budget, and in compliance with the rules and regulations of the civil service commission of the state; and may retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice.

c. Directors shall receive no salary or other compensation, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of official duties. Any other provision of law to the contrary notwithstanding, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his or her office or employment or any benefits provided under the retirement and social security law by reason of acceptance of membership on the authority, provided, however, that a director who holds such other public office or employment shall receive no additional compensation for services rendered pursuant to this article, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of such services. Directors may engage in private employment, or in a profession or business, subject to the limitations contained in sections seventy-three and seventy-four of the public officers law. The authority shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a state agency, and its directors shall be officers of the authority for the purposes of said sections.

d. Four directors of the authority shall constitute a quorum for transaction of business or the exercise of any power of the authority. For the transaction of business or the exercise of any power of the authority, the authority shall have power to act by majority of the directors present at any meeting at which a quorum is in attendance. The authority may delegate to one or more of its directors, or its officers, agents and employees, such powers and duties as it may deem proper. Nothing contained in this paragraph shall prevent the directors from conducting their meetings by televideo or teleconference, or by telephone conference, provided that at least three directors of the authority shall be physically present.

e. The governor may remove any director for inefficiency, neglect of duty or misconduct in office after giving him or her a copy of the charges against him or her and an opportunity to be heard, in person or by counsel in his or her defense, upon not less than ten days' notice. If any director shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such director, and his or her findings thereon, together with a complete record of the proceedings.

f. The authority shall continue so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state.

4. Powers of the authority. Except as otherwise limited by this section, the authority shall have power:

a. To sue and be sued;

b. To have a seal and alter the same at pleasure;

c. To borrow money and issue negotiable or non-negotiable notes, bonds or other obligations, to the limits and for the purposes described in this section, and to provide for the rights of the holders thereof;

d. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the authority, in obligations of the state or the United States of America, in obligations the principal and interest of which are guaranteed by the state or the United States of America, or in deposits with such banks or trust companies as may be designated by the authority. Each such bank or trust company deposit shall be continuously and fully secured by direct obligations of the state or the United States of America, or by obligations the principal and interest of which are guaranteed by the state or the United States of America, and additionally, any funds managed by the authority for any senior housing opportunities corporation may be continuously and fully secured by obligations of any senior housing opportunities corporation of a market value equal at all times to the amount of the deposit, and all banks and trust companies are hereby authorized to give such security;

e. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this section;

f. To enter into contracts and leases and to execute all instruments necessary to the purposes of the authority or to carry out any powers expressly given it;

g. To acquire, purchase, hold, lease as lessee, dispose of and use any real or personal property or any interest therein, or to sell, lease as lessor, grant easements or rights on, transfer and dispose of any property or interest therein at any time as it may deem necessary, convenient or desirable to effectuate the purposes of this section;

h. To make plans, surveys and studies necessary, convenient or desirable to effectuate its purposes and powers;

i. To enter upon such lands, waters or premises as in the judgment of the authority may be necessary, convenient or desirable for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this article, the authority being liable for actual damage done;

j. To conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof to have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the authority shall fail or refuse to aid or assist the authority in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the authority is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;

k. To acquire senior housing opportunity corporation bonds and notes, and to make loan commitments and loans to senior housing opportunity corporations, and to enter into option arrangements with senior housing opportunity corporations for the purchase of senior housing opportunity corporations bonds and notes;

1. To sell any senior housing opportunity corporations bonds or notes, other securities, or other personal property acquired by the authority whenever it is determined by the authority that the sale of such property is desirable, such bonds and notes to be sold by the authority only at public sale at such price or prices as the authority shall determine, provided that a notice of such sale shall be published at least once not

less than five days prior to the date of such sale in a financial newspaper or journal published in the city of New York. The proceeds of such sale shall be subject to such agreements with bondholders or noteholders as may then exist;

m. To apply for and receive, in its own name or in the name of the state, gifts or grants or loans of funds or property from the federal government or from the state or from any other federal or state public body or political subdivision or any other person or entity, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable, and to comply, subject to the provisions of this section, with the terms and conditions thereof; and

n. To appoint such advisory committees as may be necessary, convenient or desirable to effectuate the purposes and powers of the authority.

5. Special powers of the authority. In order to carry out the purposes of this section, the authority shall have and exercise the following special powers:

a. Commitments for senior housing opportunities partnership financing instruments:

(1) The authority shall enter into a contract or contracts with a bank or consortium of banks to make senior housing opportunities partnership financing instruments available to senior housing opportunity corporations for the development of projects in an amount or amounts not to exceed the cost of such project. In connection with making available such senior housing opportunities partnership financing instruments, the authority may fix and collect such fees and charges, including but not limited to reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable.

(2) In no event shall the authority approve such financing prior to the formal approval of financing or of a financial pro forma by such bank or banks in whatever means are traditionally and customarily used to approve such commitments, through the credit committees of such banks, or through their boards of directors, as appropriate, provided that such formal approval may be contingent on participation by the authority in the financing.

(3) The authority may sell a credit enhancement, letter of credit or other similar credit device for purposes of the development of a senior housing opportunities facility project to a bank, consortium of banks or a senior housing opportunities development corporation, upon application by such bank or consortium, or by the senior housing opportunities development corporation at an appropriate and competitive market rate, or in the absence of such appropriate and competitive market rate, upon such security as the authority shall deem appropriate. In the case of a mixed-use project, or a project that encompasses more than a senior housing opportunities facility, such credit device shall be limited to the senior housing opportunities facility portion of the project. Such credit device shall not exceed one hundred percent of the appraised value of the project as built and fully occupied, after discounting for other security pledges.

(4) The authority may deny an application for a financing instrument for any reason it deems appropriate in the public interest. The extension of any such credit or loan is subject to the ability of the authority to secure the necessary financing.

b. Construction, operation and maintenance of senior housing opportunities facility projects.

(1) The authority and a senior housing opportunity corporation may enter into a contract for the operation and maintenance of a senior housing opportunities facility owned by the authority by such senior housing opportunity corporation or by a person approved by the authority and such senior housing opportunity corporation. Such contract may include provision for all or part of the amounts necessary to provide for (A) the expense of operation and maintenance of such senior housing opportunities facility including, without limitation, insurance, extensions, betterments and replacements and the principal of and interest on any bonds or notes of the authority, (B) deficits resulting from failure to secure sums payable to the authority by such senior housing opportunity corporation, (C) reserves or sinking funds for any of the foregoing, and (D) the payment to the authority of expenses incurred by the authority related to placing the project in operation. Subject to any contracts with the holders of its bonds or notes, the authority is hereby authorized to do and perform any and all acts or things necessary, convenient or desirable to carry out and perform its obligations under every such contract and, in accordance with any such contract to waive, modify, suspend or reduce charges which would otherwise be charged and collected by the authority from the senior housing opportunity corporation. A senior housing opportunity corporation shall not be liable for any act or omission of the authority, its officers, agents, servants or contractors in the performance of any such contract by the authority.

(2) A contract entered into by the authority and a senior housing opportunity corporation pursuant to this subdivision may provide that at its termination the title to the senior housing opportunities facility shall vest in the senior housing opportunity corporation or its successor in interest, if any, free and clear of any indebtedness contracted by the authority. Any such contract entered into by the authority and any senior housing opportunity corporation which provides that title shall so vest in the senior housing opportunity corporation or its successor in interest shall be subject at a minimum to the following provisions: (A) the senior housing opportunity corporation shall pledge security for the payment of annual payments including interest on debt; (B) the total unpaid payments in relation to the principal of the indebtedness shall be deemed to be indebtedness of the senior housing opportunity corporation; and (C) the senior housing opportunity corporation shall not be liable for a default on the obligations of the authority with respect to the facility if it is not in default on its payment pursuant to the contract.

6. Miscellaneous provisions. a. The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation any moneys, real property or other property for any of the purposes of this section. The directors or members of each subsidiary corporation shall be the same persons holding the offices of members of the authority. Each subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities, and shall be subject to the restrictions and limitations to which the authority may be subject. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority. If the

authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation, it shall create each such public benefit corporation by executing and filing with the secretary of state a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this section which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness. Whenever any state, political subdivision, senior housing opportunity corporation, commission, agency, officer, department, board, division or person shall enter into agreements with the authority it shall have the same authorization and power for any of such purposes to cooperate and enter into agreements with a subsidiary corporation of the authority.

b. For purposes of the federal internal revenue service revenue rulings or revenue procedure, including revenue ruling 63-20 and revenue procedure 82-26 and successors and amendments thereto, the authority shall be and is hereby declared to be a political subdivision, or in the alternative an agent for the state for purposes of acquiring a beneficial interest in a senior housing project and approving the obligations issued by the senior housing development corporation.

7. Revolving fund. a. There is hereby established in the custody of the authority a special fund to be known as the senior housing opportunities facilities revolving fund. Moneys in the fund shall be segregated from all other funds of or in the custody of the authority subject to any rights of holders of authority bonds or notes issued for the purposes of this section. Moneys in the revolving fund shall be applied to or paid out for authorized purposes of the fund on the direction of the chair of the authority in accordance with this section, or such other person as the authority shall authorize to make such direction. In consultation with the director of the division of the budget, the authority may establish within the revolving fund additional accounts or subaccounts and specify any conditions applicable to the transfer of moneys between such accounts or subaccounts. With respect to each senior housing opportunities facilities project, the authority shall establish and maintain a record of the corpus allocation for such project and any applicable investment earnings attributable to such corpus allocation for the benefit of such project in accordance with the terms of the applicable project financing or loan agreement.

b. Such fund shall consist of federal grants and awards or other federal assistance; moneys appropriated for the purpose of such fund or otherwise transferred by the state for deposit therein by the comptroller as required by law; payments of principal and interest made by senior housing opportunity corporations pursuant to loan or other agreements entered into pursuant to this section, provided, however, if such loans were financed by the issuance of bonds or notes of the authority, deposit of such payments into the fund shall be subject to the rights of the holders of such bonds or notes to receive such moneys; investment earnings on amounts in such fund; any other payments received from senior housing opportunity corporations pursuant to a loan or other agreement made pursuant to this section for costs of managing and admin-

istering the program; and the proceeds of bonds or notes issued by the authority for purposes of providing financial assistance to senior housing opportunity corporations.

c. Moneys in the revolving fund shall be applied by the authority to provide financial assistance to senior housing opportunity corporations for projects, including any one or more of the following:

(1) making loans to senior housing opportunity corporations for projects, provided such loans are made at market or below market rates and do not have a final maturity of more than forty years following scheduled completion of the eligible project;

(2) buying or refinancing debt obligations of senior housing opportunity corporations at market or below market rates;

(3) guarantying or purchasing insurance or other credit enhancement for senior housing opportunity corporation bonds and notes or senior housing opportunities partnership financing instrument where such action would improve credit market access for or reduce interest rates on such senior housing opportunity corporation financing;

(4) providing a source of revenue or security for payment of principal and interest on bonds or notes issued by the authority if the proceeds of the sale of such bonds or notes will be deposited in the fund;

(5) providing interest rate subsidies from investment earnings on corpus allocations to subsidize loans to senior housing opportunity corporations made from the proceeds of the authority's bonds or notes;

(6) using investment earnings on moneys in the fund to pay the costs of the authority of administering and managing the program.

d. Notwithstanding the foregoing provisions of this subdivision if the sources of revenues described in this subdivision are at any time insufficient to make a reimbursement when due, the authority shall make such reimbursement from any other available amounts in the revolving fund, excluding all amounts that are the subject of a corpus allocation, provided that the amounts paid from fund sources shall be reimbursed upon a determination by the director of the budget that future revenues obtained from such sources are in excess of the amounts reasonably needed to make future reimbursements pursuant to this subdivision.

e. Moneys in the revolving fund may be invested as provided in (1) investment agreements continuously secured by obligations with any insurance or reinsurance company or corporate affiliate thereof rated by a nationally recognized rating agency in one of its two highest categories, any bank, trust company or broker or dealer, as defined by the securities exchange act of nineteen hundred thirty-four, which is a dealer in government bonds, which reports to, trades with and is recognized as a primary dealer by a federal reserve bank and is a member of the securities investors protection authority, provided that no investment agreement shall be entered into with an insurance or reinsurance company or corporate affiliate thereof, if, (A) such obligations securing such investment agreements are obligations of the state or the United States of America, or obligations the principal and interest of which are guaranteed by the state or the United States of America, (B) such obligations are delivered to a trustee for the benefit of the authority or, with respect to moneys pledged under an indenture of trust relating to bonds or notes of the authority, to the trustee under such indenture, or are supported by a safe keeping receipt issued by a depository satisfactory to the authority as applicable, provided that such investment agreements must provide that the value of the underlying obligations shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the amount deposited

thereunder, (C) a prior perfected security interest in the obligations which are securing such agreement has been granted to the authority, as applicable, and (D) such obligations are free and clear of adverse third party claims, or (2) obligations the interest on which is excludable from gross income under section one hundred three of the internal revenue code, provided that such obligations are rated by a nationally recognized rating agency in one of its two highest rating categories.

f. In addition to the powers granted to the authority elsewhere in this section, the authority may make loans to senior housing opportunity corporations for purposes of financing projects for which the revolving fund may be used, may accept the obligations of any senior housing opportunity corporation as security for the repayment of a loan to such senior housing opportunity corporation, and may assign and pledge such senior housing opportunity corporation obligations and loan agreements for the benefit of the holder of obligations of the authority from the proceeds of which such loans are made. Loan proceeds may be disbursed to a senior housing opportunity corporation with any restrictions imposed by the authority in connection with such loan or obligations of the authority from the proceeds of which such loan is made.

8. Audits. The authority shall arrange for any audits required by law for the purpose of issuing its bonds or notes or otherwise to provide financial assistance to senior housing opportunity corporations, and provide for the implementation of any independently conducted reviews or audits.

9. Default. In the event a senior housing opportunity corporation shall fail to make any payment due the authority pursuant to a loan agreement or other obligation of the senior housing opportunity corporation issued as security for the undertaking of the senior housing opportunity corporation thereunder, the authority shall certify to the comptroller, and notify the chair of the senate finance committee, the chair of the assembly ways and means committee, the director of the division of the budget, and the governing body of the senior housing opportunity corporation that such senior housing opportunity corporation has failed to make such payment. Such certificate shall be in such form as may be determined by the authority provided it shall specify the exact amount of debt service and surcharge, if applicable, required to satisfy such senior housing opportunity corporation's unpaid obligation. The comptroller, upon receipt of such certificate from the authority, is authorized to and shall, to the extent not otherwise prohibited by law and subject to any other provision of law providing for withholding of payments to the senior housing opportunity corporation which take precedence over this subdivision, withhold from such senior housing opportunity corporation the next succeeding payments of state aid or local assistance otherwise payable to it to the extent necessary to meet the certified amount of debt service and surcharge, if applicable, due the authority and shall immediately pay over to the authority as a debt service payment on behalf of such senior housing opportunity corporation the amount so withheld. The authority shall further take any action permitted by law to recover such amount.

10. Issuance and sale of loan recipients bonds and notes. Notwithstanding any by-law, rule or regulation requiring the recipient to issue bonds or notes at a public or competitive sale, any recipient of a loan from the authority pursuant to this article may validly issue its notes or bonds to the authority, as evidence of its obligation to repay such loan.

11. Co-operation and assistance of other agencies. The authority may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency or municipality or political subdivision of the state. Each such agency, municipality and subdivision is hereby authorized to make the same available to the authority and otherwise to assist it in the performance of its functions. The officers and personnel of such agencies, municipalities and subdivisions, and of any other government or agency whatever, may serve at the request of the authority upon such advisory committees as the authority shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.

12. Notes and bonds of the authority. a. The authority shall have power and is hereby authorized from time to time to issue its negotiable or non-negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount, as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving its purposes or to any senior housing opportunity corporation or recipient for such purposes. The authority shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding, and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

b. Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be (1) general obligations of the authority payable out of any revenues or monies of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular recipients or revenues, (2) special obligations of the authority payable solely from the revenues, service charges, rentals, proceeds or other payments to be received on account of the mortgage, loan or other agreements and payments, reserve and insurance funds or accounts issuance of special obligations, and fees, charges or other monies to be received by the authority in respect to loans made pursuant to this section, or from amounts received by the authority pursuant to any contract, lease, easement, license or other instrument entered into by the authority pursuant to this section, and may, but need not, be secured by mortgages, assignments or pledges of such revenues, service charges, rentals, proceeds, other payments, funds and accounts, fees, charges and other monies, and by mortgages or assignments thereof in respect to projects, and may include pooled financings subject only to any agreements with the holders of particular special obligation notes or bonds issued to finance the cost of, or loans for, a project or projects.

c. Any bonds or notes issued for the purpose of financing amounts deposited or to be deposited in the revolving fund may be issued in an aggregate principal amount sufficient to finance the amount to be deposited plus an amount sufficient to fund any debt service reserve fund established by the authority and to provide for the payment of fees and other charges and expenses of the authority in connection with such bonds and notes.

d. The notes and bonds shall be authorized by resolution of the directors of the authority, shall bear such date or dates, and shall mature

at such time or times, as such resolution or resolutions may provide; provided, however, that the final maturity of any bond issued for the purpose of financing any amounts deposited or to be deposited in the revolving fund shall not exceed forty years from the date of issue of such bond. The notes and bonds shall bear interest at such rate or rates which may vary from time to time, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine. No notes or bonds of the authority may be sold by the authority at private sale, however, unless such sale and the terms thereof have been approved in writing by (1) the comptroller, where such sale is not to the comptroller, or (2) the director of the budget, where such sale is to the comptroller.

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

(1) pledging all or any part of the rentals, rates, charges and other fees made or received by the authority and other monies received or to be received from the ownership or operation or otherwise in connection with any project or projects and all or any part of the monies received in payment of principal or interest on bonds or notes of any state agency and senior housing opportunity corporation bonds or notes acquired by the authority, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) pledging all or any part of the assets of the authority including senior housing opportunity corporation bonds and notes acquired by the authority in the issuance of general obligations, and in the issuance of special obligations, notes or other evidences of indebtedness of any person acquired by the authority, and assigning and pledging any mortgages or other security interests acquired by the authority or any interests of the authority in properties or revenues or other sums payable to the authority and any reserve and issuance funds or accounts or other funds and accounts established in connection with the issuance of special obligations to secure the payment of the notes or bonds or of any issue of notes or bonds of general obligations or special obligations, as the case may be, subject to such agreements with noteholders or bondholders as may then exist;

(3) the use and disposition of rentals, rates, charges and other fees made or received by the authority;

(4) the setting aside of reserves or sinking funds and the regulation and disposition thereof from the ownership or operation or otherwise in connection with any project or projects and of the gross income from senior housing opportunity corporation bonds and notes, and bonds and notes of any state agency owned by the authority;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of

notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limitations on the amount of monies to be expended by the authority for operating, administrative or other expenses of the authority;

(9) vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this section, and limiting or abrogating the right of the bondholders to appoint a trustee under this section or limiting the rights, powers and duties of such trustee; and

(10) any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

f. In addition to the powers conferred upon the authority to secure its notes and bonds, the authority shall have power in connection with the issuance of notes and bonds to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of its monies or property including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this section and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes and bonds of the authority.

g. It is the intention of this subdivision that any pledge, mortgage or security instrument made by the authority shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the authority shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and the authority shall not be required to comply with any of the provisions of the uniform commercial code.

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

i. The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be cancelled, at a price not exceeding (1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or (2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

j. Neither the state nor any senior housing opportunity corporation shall be liable on notes or bonds issued as general obligations of the authority and such notes and bonds shall not be a debt of the state or

any senior housing opportunity corporation, and such notes and bonds shall contain on the face thereof a statement to such effect. The state shall not be liable on notes or bonds issued as special obligations of the authority, and such notes and bonds shall not be a debt of the state and shall be payable solely from the revenues, service charges, rentals, proceeds or other payments to be derived from the extension of credit or the loan for the project for which such notes and bonds were issued, and such notes and bonds shall contain on the face thereof a statement to such effect.

k. The authority may obtain from any department or agency of the United States of America any available insurance or guaranty for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds or notes issued by the authority, but notwithstanding any other provisions of this section shall not enter into any agreement or contract with respect to any such insurance or guaranty to the extent that it would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the authority.

13. Reserve funds and appropriations. a. The authority may create and establish one or more reserve funds to be known as debt service reserve funds and may pay into such debt service reserve funds any monies appropriated and made available by the state for the purposes of such funds, any proceeds of sale of notes or bonds, to the extent provided in the resolution of the authority authorizing the issuance thereof, and any other monies which may be made available to the authority for the purpose of such funds from any other source or sources.

b. The monies held in or credited to any debt service reserve fund established under this subdivision, except as otherwise provided in this subdivision, shall be used solely for the payment of the principal of bonds of the authority secured by such debt service reserve fund as the same mature or as payments required by the terms of any contracts therefor as sinking fund payments become due, the purchase of such bonds of the authority, the payment of interest on such bonds of the authority or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided however, that the authority shall have power to provide that monies in any such fund shall not be withdrawn therefrom at any time in such amount of any sinking fund payments becoming due and principal and interest maturing and becoming due in any succeeding calendar year on the bonds of the authority then outstanding and secured by such debt service reserve fund, except for the purpose of paying any sinking fund payments becoming due and principal of and interest on such bonds of the authority secured by such debt service reserve fund maturing and becoming due and for the payment of which other monies of the authority are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred by the authority to any other fund or account of the authority and the authority shall have power to provide that any such transfer shall not reduce the amount of such debt service reserve fund below the maximum amount of any sinking fund payments becoming due and principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the authority then outstanding and secured by such debt service reserve fund.

c. The authority shall not issue bonds at any time if the maximum amount of any sinking fund payments becoming due and principal and interest maturing and becoming due in any succeeding calendar year on the bonds outstanding and then to be issued and secured by a debt

service reserve fund will exceed the amount of such debt service reserve fund at the time of issuance, unless the authority, at the time of the issuance of such bonds, shall deposit in such debt service reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such debt service reserve fund, will be not less than the maximum amount of any sinking fund payments becoming due and principal and interest maturing and becoming due in any succeeding calendar year on the bonds then to be issued and on all other bonds of the authority then outstanding and secured by such debt service reserve fund.

d. To assure the continued operation and solvency of the authority for the carrying out of the public purposes of this section, provision is made in this section for the accumulation in each debt service reserve fund of an amount equal to the maximum amount of any sinking fund payments becoming due and principal, and interest maturing and becoming due in any succeeding calendar year as determined by the authority on all bonds of the authority then outstanding and secured by such debt service reserve fund. In order further to assure the maintenance of such debt service reserve funds in the respective amounts provided therefor by the authority in the issuance of its bonds secured thereby, there shall be annually apportioned and paid to the authority for deposit in each such debt service reserve fund such amount, if any, as shall be certified by the chief executive officer of the authority to the governor and director of the budget as necessary to restore such debt service reserve fund to an amount equal to the maximum amount provided therefor by the authority as aforesaid. The chief executive officer of the authority shall annually, on or before December first, make and deliver to the governor and director of the budget his or her certificate stating the amount, if any, required to restore each debt service reserve fund to the amount aforesaid and the amount or amounts so certified, if any, shall be apportioned and paid to the authority during the then current state fiscal year. The principal amount of bonds secured by a debt service reserve fund or funds to which state funds are apportionable pursuant to this subdivision shall be limited to the total amount of bonds and notes outstanding on the effective date of this section, plus the total amount of bonds and notes contracted after the effective date of this section to finance projects in progress on the effective date of this section as determined by the New York state public authorities control board created pursuant to the state finance law whose affirmative determination shall be conclusive as to all matters of law and fact solely for the purposes of the limitations contained in this subdivision, but in no event shall the total amount of bonds so secured by such a debt service reserve fund or funds exceed forty million five hundred thirteen thousand dollars, excluding bonds issued to refund such outstanding bonds until the date of redemption of such outstanding bonds. As outstanding bonds so secured are paid, the amount so secured shall be reduced accordingly but the redemption of such outstanding bonds from the proceeds of refunding bonds shall not reduce the amount so secured.

e. For the purposes of this section, maximum amount of any sinking fund payments becoming due and principal and interest maturing and becoming due in any succeeding year means, as of the date of computation, the largest amount of money required in any succeeding year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of any contracts to be made to any sinking fund established for the payment or redemption of such bonds,

provided that the principal amount of any bonds required to be made to any such sinking fund during any year shall, for the purposes of this definition, be considered as maturing in the year during which such payment is required and not in the year in which the stated maturity of such bonds occurs. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such fund shall be invested shall be valued at par, or if purchased at less than par, at their cost to the authority.

14. Agreement of the state. The state does hereby pledge to and agree with the holders of any notes or bonds issued under this section, that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest of any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

15. Right of state to require redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the authority to redeem, prior to maturing, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers publishing and circulating respectively in the cities of Albany and New York at least twice, the first publication to be at least thirty days before the date of redemption.

16. Remedies of noteholders and bondholders. a. In the event that the authority shall default in the payment of principal of or interest on any issue of notes or bonds after the same shall become due, whether on any sinking fund payment date, at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this section or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Albany and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes provided in this subdivision.

b. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name,

(1) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect rentals, rates, charges and other fees and to collect interest and amortization payments on senior housing opportunity corporation bonds and notes and bonds and notes of any state agency held by it adequate to carry out any

agreement as to, or pledge of, such rentals, rates, charges and other fees and of such interest and amortization payments, and to require the authority to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this section;

(2) bring suit upon such notes or bonds;

(3) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such notes or bonds;

(4) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds; and

(5) declare all such notes or bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, to annul such declaration and its consequences.

c. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

d. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

e. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority, to the comptroller and to the attorney general of the state.

17. Notes and bonds as legal investment. The notes and bonds of the authority are hereby made securities in which all public officers and bodies of the state and all senior housing opportunity corporations and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all senior housing opportunity corporations and political subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

18. Exemption from taxation; payments in lieu of taxes. a. Real property owned by the authority shall be exempt from any taxation, special ad valorem levy and special assessment, but shall be subject to a payment in lieu of taxes.

b. The authority shall be required to pay no fees or taxes, whether state or local, including but not limited to fees or taxes on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, real or personal, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any rentals, rates, charges or other fees, revenues or other income received by the authority and that the bonds and notes of the authority and the income therefrom shall at all times be exempt from taxation, except for

gift and estate taxes and taxes on transfers. Nothing contained in this subdivision shall affect the obligation imposed by this section on the authority to make in lieu payments.

c. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by the authority.

19. Actions against the authority. a. As a condition to the consent of the state to such suits against the authority, in every action against the authority for damages, for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority or other officer designated for such purpose and that the authority has neglected or refused to make an adjustment or payment thereof.

b. An action against the authority founded on tort, except an action for wrongful death, shall not be commenced more than one year after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by and in compliance with all the requirements of section fifty-e of the general municipal law. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of the public authorities law.

c. The authority may require any person, presenting for settlement on account or claim for any cause whatever against the authority, to be sworn before a director, counsel or an attorney, officer or employee of the authority designated for such purpose, concerning such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.

d. The rate of interest to be paid by the authority upon any judgment for which it is liable shall not exceed four per centum per annum.

20. Severability. If any provision of this section or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of this section or the application of any part thereof to any other person or circumstance and to this end the provisions of each subdivision of this section are hereby declared to be severable. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general, special or local, the provisions of this section shall be controlling.

§ 2. This act shall take effect immediately.