

Chapter 392 of the laws of 1973
NEW YORK STATE MEDICAL CARE FACILITIES
FINANCE AGENCY ACT

- Section 1. Short title.
2. Declaration of policy and statement of purposes.
3. Definitions.
4. New York state **medical care facilities finance agency**.
5. Powers of the agency.
- 5-a. Federally-aided mortgage loans.
- 5-b. Equipment loans.
- 5-b. Health maintenance organization loans.
- 5-c. Terms and conditions regarding alternative indebtedness.
- 5-d. Financing non-profit housing and health facilities.
6. Bonds and notes of the agency.
7. Hospital and nursing home projects reserve funds and appropriations.
- 7-a. Secured hospital projects reserve funds and appropriations.
8. Health facilities reserve funds and appropriations.
9. Special provisions relating to the municipal health facilities improvement program.
- 9-a. Special provisions relating to mental health services facilities improvement bonds and notes.
10. Bonds and notes as legal investments.
11. Exemption from taxation of property and income.
12. Exemption from taxation of notes and bonds.
13. Agreement with the state.
14. State's right to require redemption of bonds.
15. Remedies of noteholders and bondholders.
- 16-a. Equal employment opportunity program.
- 16-b. Minority and women-owned business enterprise program.
17. Assistance by state officers, departments, boards and commissions.
18. Annual report.
19. Bond reserve insurance fund.
20. Actions against agency.
21. Act not affected if in part unconstitutional.

22. Inconsistent provisions in other laws superseded.

Section 1. Short title. This act may be cited as the "New York state medical care facilities finance agency act."

§ 2. Declaration of policy and statement of purposes. The protection and promotion of the health of the inhabitants of the state are matters of public concern. In furtherance of this purpose, it is the policy of the state to encourage the prompt and efficient provision of health and health-related services at a reasonable cost by the private and public sectors in modern, well-equipped health facilities accessible to the communities to be served.

The legislature has heretofore found that a serious shortage of safe and sanitary nursing home accommodations exists in many communities throughout the state; that many hospitals and other health facilities throughout the state are no longer adequate to meet the needs of modern medicine; that such inadequate and outmoded facilities deny to the people of the state the benefits of health care of the highest quality and that their replacement and modernization is essential to protect and prolong the lives of the state's population. The legislature has heretofore found and declared that the accomplishment of these purposes cannot be readily achieved by the ordinary unaided operation of private enterprise and to this end has constituted and empowered the New York state housing finance agency, a multi-purpose corporate governmental agency of the state, to obtain funds through the issuance of its notes and bonds to finance the construction, acquisition, reconstruction, rehabilitation and improvement of a broad array of health facilities in addition to issuing its notes and bonds to carry out other program responsibilities which touch on the quality of life for the vast majority of the state's residents, including the providing of housing for persons of low income, higher educational facilities for the state university of New York, mental health facilities, child care facilities and facilities for the care of senior citizens.

The public purposes heretofore enumerated have not yet been fully accomplished despite the significant investment of funds through the New York state housing finance agency in the construction of hospitals, nursing homes and health-related facilities.

In order to permit an acceleration in the implementation of these programs in areas where the public need remains urgent, without jeopardizing the orderly marketing by the New York state housing finance agency of its notes and bonds for other program purposes, it is hereby found and declared that a separate corporate governmental agency, to be known as the "New York state medical care facilities finance agency," should be created as a single purpose agency to act in concert with the New York state housing finance agency and to devote its entire energy and resources to the provision of additional funds for the construction of health and health-related facilities by nursing home companies created pursuant to the provisions of article twenty-eight-A of the public health law, by hospitals and non-profit medical corporations constituting eligible borrowers pursuant to the provisions of article twenty-eight-B of the public health law and by municipalities constituting social services districts pursuant to the provisions of the health and mental hygiene facilities improvement act. In this manner, the broadest possible base of investment by the greatest number of the general public may be had and the initiative and strength of our private enterprise economy may most readily be harnessed for the benefit of the people of the state.

Prompt provision of well-equipped, modern hospitals, schools and other facilities related to the care, maintenance and treatment of mentally ill and developmentally disabled persons is also needed in the state. In order to encourage the investment of private capital in such hospitals, schools and other mental health services facilities and to assure their timely construction, acquisition, reconstruction, rehabilitation and improvement, or the refinancing thereof, the New York state medical care facilities finance agency should be empowered, through the issuance of its bonds, notes or other obligations to the private investing public, to obtain all or a portion of the funds necessary to finance the same and to meet the needs of patients and staff at such facilities.

It is frequently appropriate to combine and coordinate the development, rehabilitation and provision of housing with the development, rehabilitation and provision of health and health related facilities such as intermediate care, skilled nursing, aged treatment, and hospice facilities for which there is also a need. In order to encourage the investment of private capital in non-profit housing and health facilities, and to assure the expeditious completion of such facilities, the New York state medical care facilities finance agency should be empowered, through the issuance of its bonds, notes or other obligations to the private investing public, to obtain funds necessary to finance loans, for the construction, acquisition, reconstruction, rehabilitation or improvement of such facilities.

§ 3. Definitions. As used in this article, unless a different meaning clearly appears from the context:

1. "Agency" shall mean the corporate governmental agency created by section four of this act.

2. "Amortized value" means, when used with respect to securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed since the date of such purchase; and (a) in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and (b) in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

3. "Bonds" and "notes" shall mean bonds and notes, respectively, issued by the agency pursuant to this act.

(a) "Hospital and nursing home project bonds" and "hospital and nursing home project notes" shall mean bonds and notes, respectively,

issued by the agency for the purpose of making loans to hospital corporations and non-profit medical corporations constituting eligible borrowers or nursing home companies.

(b) "Health facilities bonds" and "health facilities notes" shall mean bonds and notes, respectively, issued by the agency for the purpose of financing the construction, acquisition, reconstruction, rehabilitation or improvement of health facilities for municipalities pursuant to this act and the health and mental hygiene facilities improvement act.

(c) "Municipal hospital and municipal nursing home project bonds" and "municipal hospital and municipal nursing home project notes" shall mean bonds and notes, respectively, issued by the agency for the purpose of making mortgage loans to municipal hospitals or municipal nursing homes.

* (d) "Special hospital project bonds" shall mean bonds issued pursuant to section seven-a of this act for the purpose of making mortgage loans to eligible secured hospital borrowers.

* NB Expired December 31, 2015

4. "Commissioner" shall mean the New York state commissioner of health.

5. "Department" shall mean the New York state department of health.

6. "Eligible borrower" shall mean a non-profit hospital corporation organized under the laws of this state, or a non-profit medical corporation organized under and governed by article forty-four of the public health law, which has entered into a regulatory agreement in accordance with the provisions of section twenty-eight hundred seventy-three of the public health law.

6-a. "Federally-aided mortgage loan" means a loan secured by a mortgage lien on the real property of a project or on a leasehold on such real property, provided that the term of such leasehold is not less than twenty-five percent longer than the term of the mortgage, and the personal property attached to or used in connection with the construction, acquisition, reconstruction, refinancing, rehabilitation, improvement, management or operation of the project, made by the agency to a municipal hospital, municipal nursing home, not-for-profit hospital

corporation, not-for-profit corporation providing a residential health care facility or not-for-profit medical corporation organized pursuant to article 44 of the public health law, which loan is insured by the federal government. This subdivision does not limit the agency from consenting to the modification of any instrument executed in connection with a federally-aided mortgage loan, provided that the modification does not materially reduce the value of the security for the federally-aided mortgage loan. A leasehold under this subdivision shall conform to standards adopted by the agency, with the approval of the division of the budget, that adequately protect the interests of the agency, the state, and creditors.

* (6-b) "Eligible secured hospital borrower" shall mean a not-for-profit hospital corporation organized under the laws of this state, which has been designated by the commissioner of health and the New York state public health council as a needed facility eligible to receive distributions from the reimbursement pools established pursuant to paragraph (c) of subdivision nine of section twenty-eight hundred seven-a of the public health law, or any successor pool or pools established to serve a substantially similar purpose to such pools.

* NB Expired December 31, 2015

7. "Facilities development corporation" shall mean the corporation created pursuant to the facilities development corporation act.

8. "Health facility" shall mean a building, a unit within a building, a laboratory, a classroom, a housing unit, a dining hall, an activities center, a library, or any structure on or improvement to real property of any kind or description, including fixtures and equipment which are an integral part of any such building, unit, structure or improvement, a walkway, a roadway or a parking lot, and improvements and connections, for water, sewer, gas, electrical, telephone, heating, air conditioning and other utility services, or a combination of any of the foregoing, whether for patient care and treatment of staff, staff family or service use, located at or related to or constituting a hospital, as defined in section 2801 of the public health law.

9. "Health facilities improvement program" shall mean a program

undertaken by the agency and, if the agency elects, with the facilities development corporation acting as its agent, for the purpose of constructing, acquiring, reconstructing, rehabilitating or improving health facilities or causing such facilities to be constructed, acquired, reconstructed, rehabilitated or improved pursuant to the facilities development improvement act, if applicable, and this act.

* 10. "Hospital project" shall mean a specific work or improvement or the refinancing of existing indebtedness which constitutes a lien or encumbrance upon the real property or assets of the eligible borrower or eligible secured hospital borrower whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specified work or improvement undertaken by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower or eligible secured hospital borrower in accordance with the provisions of article twenty-eight-B of the public health law. The term "hospital project" as used in this subdivision shall also mean a separate work or improvement owned and operated by an eligible borrower to provide such services, functions, capabilities and facilities as may be convenient or desirable for the operation of hospital or other such facility.

* NB Expired December 31, 2015

10. "Hospital project" shall mean a specific work or improvement or the refinancing of existing indebtedness which constitutes a lien or encumbrance upon the real property or assets of the eligible borrower whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specified work or improvement undertaken by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower in accordance with the provisions of article twenty-eight-B of the public health law.

* 11. "Hospital project cost" shall mean the sum total of all costs incurred by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower or eligible secured hospital borrower undertaking a project as approved by the commissioner in accordance with the provisions of article twenty-eight-B of the public health law. In the case of eligible secured hospital borrowers, hospital project costs shall include all costs relating to the

refinancing of existing indebtedness attributable to unmet bad debt and charity losses.

* NB Expired December 31, 2015

11. "Hospital project cost" shall mean the sum total of all costs incurred by a non-profit hospital corporation or a non-profit medical corporation, constituting an eligible borrower undertaking a project as approved by the commissioner in accordance with the provisions of article twenty-eight-B of the public health law.

* 12. "Mortgage loan" shall mean a loan made by the agency to an eligible borrower or eligible secured hospital borrower in an amount not to exceed the total hospital project costs and secured by a first mortgage lien on the real property of which the hospital project consists or on a leasehold on such real property, provided that the term of such leasehold is not less than twenty-five percent longer than the term of the mortgage, and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the hospital project. Such loan may be further secured by such a lien upon other real property owned by or on a leasehold on real property of the eligible borrower or eligible secured hospital borrower. Notwithstanding the foregoing provisions of this subdivision or any other provisions of this act to the contrary, any personal property may be excluded from the lien of the mortgage provided (a) the commissioner of health finds that such property is not essential for the rendition of required hospital services as such term is defined in article twenty-eight of the public health law, and (b) the agency consents to such exclusion.

The term "mortgage loan" shall also mean and include a loan made by the agency to a limited-profit nursing home company in an amount not to exceed ninety-five percentum of the nursing home project cost, or to a non-profit nursing home company in an amount not to exceed the total nursing home project cost, and secured by a first mortgage lien on the real property of which the nursing home project consists or on a leasehold on such real property provided that the term of such leasehold is not less than twenty-five percent longer than the term of the mortgage, and the personal property attached to or used in connection

with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the nursing home project. Notwithstanding the foregoing provisions of this subdivision or any other provision of this article to the contrary, any personal property may be excluded from the lien of the mortgage provided (a) the commissioner finds that such property is not essential for the nursing home project as such term is defined in article twenty-eight-A of the public health law, and (b) the agency consents to such exclusion. A leasehold under this subdivision shall conform to standards adopted by the agency, with the approval of the division of the budget, that adequately protect the interests of the agency, the state and creditors.

* NB Expired December 31, 2015

12. "Mortgage loan" shall mean a loan made by the agency to an eligible borrower in an amount not to exceed the total hospital project cost and secured by a first mortgage lien on the real property of which the hospital project consists and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the hospital project. Such loan may be further secured by such a lien upon other real property owned by the eligible borrower. Notwithstanding the foregoing provisions of this subdivision or any other provisions of this act to the contrary, any personal property may be excluded from the lien of the mortgage provided (a) the commissioner of health finds that such property is not essential for the rendition of required hospital services as such term is defined in article twenty-eight of the public health law, and (b) the agency consents to such exclusion.

The term "mortgage loan" shall also mean and include a loan made by the agency to a limited-profit nursing home company in an amount not to exceed ninety-five percentum of the nursing home project cost, or to a non-profit nursing home company in an amount not to exceed the total nursing home project cost, and secured by a first mortgage lien on the real property of which the nursing home project consists and the personal property attached to or used in connection with the construction, acquisition, reconstruction, rehabilitation, improvement or operation of the nursing home project. Notwithstanding the foregoing

provisions of this subdivision or any other provision of this article to the contrary, any personal property may be excluded from the lien of the mortgage provided (a) the commissioner finds that such property is not essential for the nursing home project as such term is defined in article twenty-eight-A of the public health law, and (b) the agency consents to such exclusion.

13. "Nursing home company" shall mean a nursing home company as defined in article twenty-eight-A of the public health law.

(a) A "limited-profit nursing home company" shall mean a company incorporated pursuant to the provisions of article twenty-eight-A of the public health law and business corporation law.

(b) A "non-profit nursing home company" shall mean a company incorporated pursuant to the provisions of article twenty-eight-A of the public health law and the not-for-profit corporation law.

14. "Nursing home project" shall mean a specific work or improvement undertaken by a nursing home company in accordance with the provisions of article twenty-eight-A of the public health law.

15. "Nursing home project cost" shall mean the sum total of all costs incurred by a nursing home company undertaking a project as approved by the commissioner in accordance with the provisions of article twenty-eight-A of the public health law.

16. "Municipality" for the purposes of the health facilities improvement program and federally-aided mortgage loans to municipal hospitals and municipal nursing homes means a county, city or town constituting a social services district as defined in sections two, sixty-one, seventy-five and seventy-five-a of the social services law, or any two or more of the foregoing which are acting jointly to provide a health facility or health facilities, municipal hospitals or municipal nursing homes.

17. "Bond reserve insurance fund" shall mean the fund created by section nineteen of this act.

* 18. "Equipment loan" shall mean a loan made by the agency to a

non-profit hospital corporation, a county hospital, a municipal hospital, a New York state department of health facility, a state university of New York health care facility or a non-profit corporation providing a residential health care facility, for the purpose of financing or refinancing the acquisition through purchase or lease of equipment, including construction and rehabilitation related to the installation of such equipment, and shall also include intellectual property or other intangible property, including information technology and software, that is eligible for tax-exempt financing under the United States internal revenue code.

The term "equipment loan" shall also mean the financing of equipment acquisitions by the purchase, lease or sublease of equipment by the agency and the lease or sublease of such equipment to a non-profit hospital corporation, a county hospital, a municipal hospital, a hospital under the jurisdiction of the state university of New York, or a non-profit corporation providing a residential health care facility for the purpose of providing for the acquisition of such equipment and for the construction and rehabilitation related to the installation thereof and shall also include intellectual property or other intangible property, including information technology and software, that is eligible for tax-exempt financing under the United States internal revenue code.

- * NB There are 3 sub 18's

- * 18. "Municipal hospital" or "municipal nursing home" shall mean a hospital or nursing home of, and located in, a municipality.

- * There are 3 sub 18's

- * 18. "Hmo investment loan" shall mean a loan made by the agency to a lending institution for the purpose of financing a loan by the lending institution to the owner of an Hmo project. Such investment loan shall be evidenced by a note or other evidence of indebtedness constituting a general obligation of the lending institution and shall be secured to the satisfaction of the agency. Such investment loan shall not exceed one hundred percent of the cost of development of the Hmo project approved by the agency.

- * There are 3 sub 18's

19. "Lending institution" shall mean any bank, trust company, national bank, state or federal mutual savings bank, state or federal savings and loan association, or state or federal credit union, insurance company, pension fund or retirement system of any corporation or association, or any other entity which is owned or controlled by any one or more of the above, provided the same is supervised by or responsible to any agency of the federal government, the state or any department thereof.

20. "Hmo project" shall mean a specific work or improvement, whether or not to effectuate all or any part of a plan, and includes lands, buildings, improvements, fixtures and personal property constructed, acquired or reconstructed, refinanced, rehabilitated, improved, managed, owned or operated by a non-profit corporation for the purpose of conducting the activities of a health maintenance organization. "Hmo project" shall also mean the refinancing of existing indebtedness which constitutes a lien or other encumbrance upon the real property or assets of the non-profit corporation conducting the activities of a health maintenance organization, whether or not such refinancing is related to the construction, acquisition or rehabilitation of a specified work or improvement. "Hmo project" shall also mean the financing or refinancing through purchase or lease of equipment, including construction and rehabilitation related to the installation of such equipment, whether or not the financing or refinancing of said equipment is related to the construction, acquisition or rehabilitation of a specified work or improvement. An Hmo project may be undertaken by:

(a) A health maintenance organization holding a valid certificate of authority issued pursuant to article forty-four of the public health law;

(b) A health maintenance organization operating under the provisions of article IX-C of the insurance law; and

(c) By a non-profit corporation which operates a facility which possesses a valid operating certificate under article twenty-eight of the public health law and which has entered into a contract with a health maintenance organization operating under the provisions of article forty-four of the public health law or article IX-C of the insurance law to provide health care services to persons enrolled in the health maintenance organization, provided the commissioner has

determined that the facility will be used principally as the medical group facility component of a group model health maintenance organization and the commissioner has approved the construction of the facility pursuant to section twenty-eight hundred two of the public health law.

21. "Non-profit housing and health facility" shall mean a specific work or improvement, whether or not to effectuate all or any part of a plan acquired, owned, constructed, rehabilitated, improved, managed or operated by a non-profit company and consisting of five or more residential units, and at the election of the agency such additional health or health related facilities as the agency may approve; and including the lands, buildings and improvements acquired, owned, constructed, managed or operated to provide such units, and health or health related facilities and such incidental and appurtenant commercial, recreation, cultural, communal, dining, parking, day care or residential child care, senior citizen and community facilities as may be approved by the agency. As used in connection with the term non-profit housing and health facility, the term residential unit shall refer to units suitable for residential use or accommodations included within the term housing as defined in subdivision nine of section twelve of the private housing finance law, and the term non-profit company shall mean a company incorporated pursuant to the provisions of the not-for-profit corporation law for the purpose of providing housing for staff members, employees, students or users of a hospital, health, or health related facility and their immediate families or for the purpose of providing a hospital, health, or health related facility.

23. "Loan" when made to either an eligible borrower or nursing home company, shall mean either a mortgage loan or a project loan, each as defined in this act.

24. "Project loan" shall mean a loan made by the agency to an eligible borrower or nursing home company in an amount not to exceed the total hospital project cost or total nursing home project cost, respectively. Such loans shall be secured in a manner acceptable to the agency and such security may consist of a mortgage on real property and

improvements or other security acceptable to the agency; provided however, that a project loan shall not include any loan made by the agency to an eligible borrower or nursing home company that constitutes a mortgage loan as defined in this act. Project loans shall only be made in accordance with guidelines adopted by the board of the dormitory authority, as successor to the agency.

§ 4. New York state medical care facilities finance agency. There is hereby created the New York state medical care facilities finance agency. The agency shall be a corporate governmental agency constituting a public benefit corporation. From and after the effective date of the health care financing consolidation act, as provided in subdivision 1 of section 1699-f of the public authorities law, the agency shall continue its corporate existence in and through the dormitory authority, and the dormitory authority shall succeed to the powers, duties and functions of the agency.

§ 5. Powers of the agency. Except as otherwise limited by this act, the agency shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this act;
4. To make and alter by-laws for its organization and internal management;
5. To acquire, hold and dispose of personal property for its corporate purposes;
6. To appoint officers, agents and employees, prescribe their duties

and qualifications and fix their compensation;

7. To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;

8. 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 agency, in obligations of the state or the United States government or obligations the principal and interest of which are guaranteed by the state or the United States government, or in any other obligations in which the comptroller of the state of New York is authorized to invest pursuant to section ninety-eight of the state finance law;

9. Subject to the approval of the commissioner of health pursuant to the provisions of article twenty-eight-A of the public health law, to make mortgage and project loans to nursing home companies and to undertake commitments to make any such mortgage and project loans;

* 10. Subject to the approval of the commissioner of health pursuant to the provisions of article twenty-eight-B of the public health law, to make mortgage and project loans to non-profit hospital corporations and non-profit medical corporations constituting eligible borrowers and eligible secured hospital borrowers and to undertake commitments to make any such mortgage and project loans;

* NB Expired December 31, 2015

10. Subject to the approval of the commissioner of health pursuant to the provisions of article 28-B of the public health law, to make mortgage loans and project loans to non-profit hospital corporations and non-profit medical corporations constituting eligible borrowers and to undertake commitments to make any such mortgage loans and project loans;

10-a. To make federally-aided mortgage loans pursuant to section five-a of this act and, in connection with such federally-aided mortgage loans, to exercise the powers and undertake the responsibilities as required by any law, regulation or other requirement of the federal government.

10-b. To make equipment loans pursuant to section five-b of this act and, in connection with such equipment loans, to enter into agreements with respect to the repayment of such loans.

10-c. Subject to any agreement with bondholders and noteholders as may then exist, to permit eligible borrowers and nursing home companies to incur, assume or guarantee indebtedness from a lender other than the agency or from the agency under a separate bond resolution, as provided for in agreements with bondholders and noteholders and section five-c of this act.

11. Subject to the approval of the commissioner of health, to sell, at public or private sale, any mortgage or other obligation securing a mortgage loan made by the agency;

12. In connection with the making of mortgage or project loans and commitments therefor to non-profit hospital corporations and non-profit medical corporations constituting eligible borrowers or nursing home companies, to make and collect from such corporations and companies such fees and charges, including but not limited to reimbursement of all costs of financing by the agency, service charges and insurance premiums, as the agency shall determine to be reasonable;

12-a. In connection with the financing or refinancing of a mental health services facility pursuant to lease, sublease, loan or other financing agreements for the purpose of providing financing or refinancing for or for the purpose of constructing, rehabilitating or improving mental health services facilities, to make and collect such fees and charges, including but not limited to reimbursement of all costs of financing by the agency, service charges, insurance premiums, letter of credit fees or the costs of any other financial mechanisms which may be used to reduce the debt service that would be payable by the agency on its mental health services facilities improvement bonds and notes, as the agency shall determine to be reasonable.

13. In connection with any property on which it has made a mortgage loan or a project loan, to foreclose on any such property secured by a

mortgage or commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; and in such event the agency may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of, and otherwise deal with, such property, in such manner as may be necessary or desirable to protect the interests of the agency therein;

14. To lease or purchase one or more existing health facilities from a municipality and cause such health facilities to be reconstructed, rehabilitated or improved, or to lease or purchase real property from a municipality and cause one or more health facilities to be constructed, reconstructed, rehabilitated or improved thereon, or to lease or purchase one or more existing health facilities from a municipality which has already been constructed, reconstructed, rehabilitated or improved provided, however, that no such health facility shall be eligible for such lease or purchase unless it has been constructed, reconstructed, rehabilitated or improved within eighteen months of the date of the bond issue and the amount of the bond issue used to finance such lease or purchase shall not exceed the total project cost to the municipality of such construction, reconstruction, rehabilitation or improvement. At the election of the agency, any construction, reconstruction, rehabilitation or improvement pursuant to this subdivision may be performed by the facilities development corporation, acting as the agent of the agency;

15. To lease or purchase from any person, firm or corporation one or more existing health facilities and cause such health facilities to be reconstructed, rehabilitated or improved or to lease or purchase real property from any person, firm or corporation and cause one or more health facilities to be constructed, reconstructed, rehabilitated or improved thereon, or to lease or purchase one or more existing health facilities from a person, firm or corporation which has already been constructed, reconstructed, rehabilitated or improved provided, however, that no such health facility shall be eligible for such lease or

purchase unless it has been constructed, reconstructed, rehabilitated or improved within eighteen months of the date of the bond issue and the amount of the bond issue used to finance such lease or purchase shall not exceed the total project cost to the municipality of such construction, reconstruction, rehabilitation or improvement. At the election of the agency, any construction, reconstruction, rehabilitation or improvement pursuant to this subdivision may be performed by the facilities development corporation, acting as the agent of the agency;

* 15-a. Notwithstanding the provisions of subdivision fifteen of this section, to lease or purchase from any person, firm or corporation one or more health facilities the construction, reconstruction, rehabilitation or improvement of which has been financed, in whole or in part, through loans furnished, secured or arranged by a local development corporation incorporated and existing pursuant to section 1411 of the not-for-profit corporation law, provided, however, that such local development corporation was in existence and engaged in promoting the development of health facilities on January 1, 1999, and provided, further, that the proceeds of the bond issue allocable to each such health facility shall not exceed seven million five hundred thousand dollars.

* NB Repealed June 30, 2027

16. To lease or sublease to a municipality health facilities which have been constructed, acquired, reconstructed, rehabilitated or improved by the agency pursuant to this act and the facilities development improvement act, if applicable;

17. To exercise all or any combination of the powers set forth in subdivisions fourteen, fifteen and sixteen of this section;

18. To procure insurance against any loss in connection with its property and other assets (including mortgages and mortgage loans) in such amounts, and from such insurers, as it deems desirable;

19. To accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or from any other

source and to comply, subject to the provisions of this act, with the terms and conditions thereof;

20. To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

21. To enter into a contract with the New York state housing finance agency to market and service any agency bonds and notes approved by the agency and to contract with the New York state housing finance agency to render such other services as the agency may request, including but not limited to the use of the premises, personnel and personal property of the New York state housing finance agency, and to provide for reimbursement to the New York state housing finance agency from the agency for any expenses necessarily incurred by the New York state housing finance agency in carrying out the terms of any such contract. Any such contract shall be subject to the separate approval of the director of the budget;

22. Subject to the approval of the commissioner of health, to acquire by purchase from the New York state housing finance agency any mortgage or other obligation securing a loan made by the New York state housing finance agency to a hospital corporation or to a nursing home company, and to sell same at public or private sale;

23. To acquire by purchase from the New York state housing finance agency its right, title and interest in real property, leaseholds and subleaseholds relating to the municipal health facilities improvement program;

24. To do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

§ 5-a. Federally-aided mortgage loans. In addition to the powers of the agency to make mortgage loans pursuant to other provisions of this act, the agency has the following powers:

1. The agency may make federally-aided mortgage loans to a municipal hospital, municipal nursing home, non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation organized pursuant to article forty-four of the public health law upon terms and conditions not inconsistent with article twenty-eight of the public health law or article sixteen or thirty-one of the mental hygiene law as the case may be and this section. The proceeds of such loan are to be used substantially to finance the construction, acquisition, reconstruction, refinancing, rehabilitation, improvement, management or operation of the project.

2. A federally-aided mortgage loan made by the agency shall not exceed an amount equal to the lesser of (i) the maximum mortgage loan authorized or approved by the federal government or (ii) one hundred percent of the cost of development of the project approved by the agency.

3. With respect to a non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation, the agency shall not make a federally-aided mortgage loan unless (a) the commissioner has approved the project, recommended the project based on public need and the financial resources available to it, and finds that the non-profit hospital corporation, non-profit corporation providing a residential health care facility, or non-profit medical corporation has complied with the provisions of article twenty-eight of the public health law or article sixteen or thirty-one of the mental hygiene law as the case may be, and that the non-profit medical corporation also has complied with the provisions of article forty-four of the public health law, and (b) the agency finds that (i) the estimated revenues of the project will be sufficient to cover all probable costs of operations and maintenance, all installments of principal and interest on the indebtedness relating to the project, taxes, and such other expenses, including the maintenance of reserves, as may be projected or required by the agency or the federal government, and (ii) with respect to a nursing home project, the project is to be available for persons of low income as defined by paragraph two of

section twenty-eight hundred sixty of the public health law.

4. As used in this section or in connection with a federally-aided mortgage loan, the term "project" means a specific work or improvement, whether or not to effectuate all or any part of a plan, and includes lands, buildings, improvements, fixtures and personal property constructed, acquired, reconstructed, refinanced, rehabilitated, improved, managed, owned or operated by a non-profit corporation pursuant to this section, to provide hospital, residential health care, residential facilities for developmentally disabled persons or mentally disabled persons or for the care, treatment, training and education of developmentally disabled persons or mentally disabled persons or comprehensive health services facilities and such related incidental and appurtenant facilities as the agency may approve. The term "project" shall also mean a separate work or improvement, including lands, buildings, fixtures and personal property related thereto, managed, owned or operated by a non-profit corporation pursuant to this section to provide such services, functions, capabilities and facilities as may be convenient or desirable for the operation of a hospital, a residential health care or comprehensive health services facility.

5. Notwithstanding any other provisions of law, general, special or local, or any provision of any charter or ordinance, including local finance law section twenty, a municipality is hereby authorized to borrow for or give a mortgage on its municipal hospitals or nursing homes for the purpose of constructing, reconstructing, rehabilitating or improving one or more such hospitals or nursing homes pursuant to this act in accordance with the terms of any agreement entered into pursuant to this act.

6. As used in this section or in connection with federally-aided mortgage loan regarding residential facilities for developmentally disabled persons or mentally disabled persons or for the care, treatment, training and education of developmentally disabled persons or mentally disabled persons the term "commissioner" shall also mean the commissioner of mental health or the commissioner of the office for people with developmental disabilities.

7. (a) In connection with the making of federally-aided mortgage loans, the commissioner of health shall charge to such non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation, for mortgage closings on or after April first, nineteen hundred eighty-nine, a fee of nine-tenths of one percent of the mortgage loan, payable on requisition on or after the mortgage closing to the state department of health by the mortgagor for deposit into the state general fund.

(b) In connection with the refinancing or refunding of federally-aided mortgage loans or loans made pursuant to articles twenty-eight-A and twenty-eight-B of the public health law, the commissioner of health shall charge to such non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation, for mortgage closings on or after April first, nineteen hundred eighty-nine, a fee of five-tenths of one percent of the new mortgage loan, payable on requisition on or after the mortgage closing to the state department of health by the mortgagor for deposit into the state general fund.

(c) The fees and charges paid by a non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation pursuant to this subdivision shall be deemed allowable capital costs in the determination of reimbursement rates established pursuant to article twenty-eight of the public health law. The cost of such fees and charges shall not be subject to reimbursement ceiling or other penalties used by the commissioner for the purpose of establishing reimbursement rates pursuant to article twenty-eight of the public health law.

*** § 5-b. Equipment loans.** 1. The agency may make an equipment loan to a non-profit hospital corporation, a county hospital, a municipal hospital, a New York state department of health facility, a state university of New York health care facility or a non-profit corporation providing a residential health care facility, upon terms and conditions not inconsistent with article twenty-eight of the public health law and this section. The proceeds of such loan are to be used substantially to

finance the acquisition through purchase or lease of equipment including construction and rehabilitation related to the installation of such equipment or the acquisition of intellectual property or other intangible property, including information technology and software, that is eligible for tax-exempt financing under the United States internal revenue code.

2. The agency shall not make an equipment loan unless the agency finds that the non-profit hospital corporation, municipal hospital, county hospital, New York state department of health facility, a state university of New York health care facility or non-profit corporation providing a residential health care facility, has complied with the provisions of article twenty-eight of the public health law in connection with the proposed equipment loan and that the commissioner has approved the equipment acquisition or lease pursuant to section twenty-eight hundred two of the public health law in any case where the acquisition or lease is subject to the provisions of such section, or has approved such acquisition or lease according to guidelines prescribed by the commissioner in any other case.

3. The agency may make an equipment loan by the purchase, lease or sublease of equipment by the agency and the lease or sublease of such equipment to a non-profit hospital corporation, a county hospital, a municipal hospital, a hospital under the jurisdiction of the state university of New York health care facility, or a non-profit corporation providing a residential health care facility for the purpose of providing for the acquisition of such equipment and for the construction and rehabilitation related to the installation thereof. Notwithstanding the above, the agency shall not make an equipment loan pursuant to this section unless or until the borrower or lessee, vendee, licensee or other ultimate beneficiary of such equipment loan has obtained the approval of the commissioner pursuant to section twenty-eight hundred two of the public health law or such other guidelines prescribed by the commissioner in any case where the acquisition or lease is or would otherwise have been subject to such provisions, had the borrower, lessee, vendee, licensee or ultimate beneficiary of such equipment loan obtained financing from a source other than the agency.

* NB There are 2 § 5-b's

*** § 5-b. Health maintenance organization loans.** 1. The agency may make Hmo investment loans to lending institutions for the purpose of financing an Hmo project. In connection with the making of investment loans and commitments therefor to lending institutions, the agency may make and collect from such lending institutions such fees and charges including, but not limited to, reimbursement of all costs of financing by the agency and service charges, as the agency shall determine to be reasonable.

2. In addition to the powers of the agency to make Hmo investment loans pursuant to other provisions of this act, the agency may make loans and undertake commitments to make loans to owners of Hmo projects, which loans may be but are not limited to mortgage loans, mortgage loans insured by the federal government or leasehold mortgage loans. Such loans shall be of such terms and conditions, and shall be secured in such manner as is satisfactory to the agency.

3. The agency shall not make a loan or Hmo investment loan pursuant to this section unless (a) the commissioner has approved the Hmo project pursuant to section twenty-eight hundred two of the public health law in any case where the project is subject to the provisions of such section or has approved the project according to guidelines prescribed by the commissioner in any other case, and (b) the agency finds that the estimated revenues of the Hmo project or the Hmo investment loan, as the case may be, will be sufficient to cover all installments of principal and interest on the indebtedness issued relating to the Hmo project, and (c) the indebtedness issued relating to the Hmo project has received an investment grade rating from a recognized rating agency, or the loan or the Hmo investment loan made by the agency is fully secured as to principal and interest by the general credit of a bank, national bank, trust company, savings bank, savings and loan association, insurance company, governmental agency of the United States of America, or a combination thereof.

* NB There are two § 5-b's

§ 5-c. Terms and conditions regarding alternative indebtedness. The agency may require such terms and conditions regarding indebtedness incurred or assumed from a lender other than the agency or guaranteed by an eligible borrower or nursing home company as it deems appropriate including qualifications and approval of the lender, approval of the purpose of the indebtedness, time or rate of amortization of principal, and time or rate of payment of interest; provided, however, that the interest of the lender created as a result of such indebtedness as to priority of lien with respect to a mortgage loan may only be on a parity with or subordinate to that of the agency in proportion to the amount of the loan secured. Such a borrower may so incur, assume or guarantee indebtedness from a lender other than the agency, or incur, assume or guarantee indebtedness from the agency under a separate bond resolution upon such terms and conditions provided for in the applicable agreement with bondholders and noteholders and with the consent of the agency where such lender is other than the agency. This section applies only where the agency has issued its bonds to make a mortgage loan or a project loan to a hospital to which the agency is authorized to make a loan pursuant to this act and the bonds and notes are not secured pursuant to paragraph (a) of subdivision one of section seven of this act.

§ 5-d. Financing non-profit housing and health facilities. 1. Subject to the provisions of any contract with noteholders and bondholders (a) to make and contract for the making of loans for the acquisition, refinancing, construction or rehabilitation of non-profit housing and health facilities and (b) to make and to contract for the making of loans to or to purchase loans from lending institutions for the purposes of financing loans for such acquisition, construction or rehabilitation.

2. The powers granted by this section may be exercised only if: (a) the commissioner has approved any health, or health related facilities which are in addition to the residential unit and housing portion of the facility, pursuant to section twenty-eight hundred two of the public

health law in any case where the facility is subject to the provisions of such section or has approved the facility according to the guidelines prescribed in any other case; and (b) (i) obligations of the agency have been issued to fund the loan made or purchased by the agency and such obligations have received an investment grade rating from a recognized rating agency, or (ii) the loan made or purchased by the agency is fully secured as to principal and interest by insurance or a commitment to insure issued by the state of New York mortgage agency or by the general credit of the bank, national bank, trust company, savings bank, savings and loan association, insurance company, the college construction loan insurance association, the student loan marketing association, or a governmental agency of the United States.

§ 6. Bonds and notes of the agency. 1. (a) The agency shall have power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount as, in the opinion of the agency, shall be necessary to provide sufficient funds for achieving its corporate purposes, including the making of mortgage loans, project loans, or equipment loans, or loans to owners of Hmo projects or Hmo investment loans and the construction, acquisition, reconstruction, rehabilitation or improvement of health facilities, the payment of interest on bonds and notes of the agency, establishment of reserves to secure such bonds and notes, and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers;

(b) The agency shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deem 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;

(c) Except as may otherwise be expressly provided by the agency, every issue of its notes or bonds shall be general obligations of the agency payable out of any revenues or monies of the agency, subject only to any

agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

2. The notes and bonds shall be authorized by resolution of the members, shall bear such date or dates, and shall mature at such time or times, in the case of any such note, or any renewals thereof, issued for achieving its corporate purposes other than the making of mortgage loans, not exceeding five years, from the date of issue of such original note, and in the case of any such note, or any renewals thereof, issued for the purpose of making mortgage loans, not exceeding seven years, from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, 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 agency may be sold by the agency, at public or private sale, at such price or prices as the agency shall determine. No notes or bonds of the agency may be sold by the agency at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller or, (b) the director of the budget, where such sale is to the comptroller.

3. 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:

(a) pledging all or any part of the fees and charges made or received by the agency, and all or any part of the monies received in payment of mortgage or project loans and interest thereon, and other monies received or to be received, to secure the payment of the hospital and nursing home project bonds or hospital nursing home project notes or of any issue thereof, subject to such agreement with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets of the agency, including mortgages and obligations securing the same, to secure the payment of

the hospital and nursing home project bonds or hospital and nursing home project notes, subject to such agreements with bondholders or noteholders as may then exist, provided that no resolution or resolutions of the agency authorizing hospital and nursing home project bonds and hospital and nursing home project notes shall (i) pledge all or any portion of the rentals paid to the agency with respect to health facilities financed with the proceeds of health facilities bonds or health facilities notes, or (ii) pledge any other assets, monies or accounts pledged to the agency as security for the payment of rentals with respect to health facilities financed with the proceeds of health facilities bonds or health facilities notes;

(c) the use and disposition of the gross income from mortgages owned by the agency and payment of principal of mortgages owned by the agency;

(d) pledging all or any part of the rentals paid to the agency with respect to health facilities financed with the proceeds of health facilities bonds or health facilities notes or any other assets, monies or accounts pledged or assigned to the agency as security for the payment of such rentals, all subject to any agreement with noteholders or bondholders as may then exist and provided that no resolution or resolutions authorizing health facilities bonds and health facilities notes shall (i) pledge all or any part of the fees and charges made or received by the agency pursuant to subdivision twelve of section five in connection with the making of mortgage loans or commitments therefor, or all or any part of the monies received in payment of such mortgage loans and interest thereon, or (ii) pledge all or any part of the mortgages of the agency or obligations securing the same, or (iii) provide as to the use and disposition of the gross income from mortgages owned by the agency or as to the payment of principal of mortgages owned by the agency;

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

(f) 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;

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

(h) 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;

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

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

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

(l) pledging all or any part of the fees and charges made or received by the agency, and all or any part of the monies received pursuant to a lease, sublease, loan or other financing agreements entered into pursuant to section nine-a of this act and interest thereon, and other monies received or to be received, to secure the payment of mental health services facilities improvement notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(m) pledging all or any part of the assets of the agency, including lease, sublease, loan or other financing agreements entered into pursuant to section nine-a of this act, and obligations securing the same, to secure the payment of mental health services improvement facilities notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(n) the use and disposition of the gross income from lease, sublease, loan or other financing agreements entered into pursuant to section nine-a of this act and payment of principal of lease, sublease, loan or other financing agreements entered into pursuant to section nine-a of this act;

(o) pledging or depositing all or any part of the assets of the agency, including moneys paid to the agency by the comptroller and the commissioner of taxation and finance of the state of New York pursuant to the provisions of section ninety-seven-f of the state finance law, to

pay or provide for the refunding of mental hygiene improvement bonds issued pursuant to section forty-seven-b of the private housing finance law.

4. It is the intention hereof that any pledge made by the agency shall be valid and binding from the time when the pledge is made; that the monies or property so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

5. Neither the members of the agency 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.

6. The agency, 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 agency, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) 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.

7. The state shall not be liable on notes or bonds of the agency and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 7. Hospital and nursing home projects reserve funds and appropriations. 1. (a) For the purposes of the issuance by the agency of

hospital and nursing home project bonds, the term "hospital and nursing home capital reserve fund requirement" shall mean, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any succeeding calendar year, of annual debt service payments of the agency, such annual debt service payments for any calendar year being an amount of money equal to the aggregate of (i) all interest payable during such calendar year on all hospital and nursing home project bonds of the agency then outstanding on said date of computation, plus (ii) the principal amount of all hospital and nursing home project bonds of the agency then outstanding on said date of computation which mature during such calendar year, plus (iii) the amount of all sinking fund payments payable during such calendar year with respect to all hospital and nursing home project bonds of the agency outstanding on said date of computation; and the term "sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund for the amortization of such term bonds. The agency shall create and establish a special fund to be known as the hospital and nursing home capital reserve fund and may pay into such reserve fund (1) any monies appropriated and made available by the state for the purposes of such fund, (2) any proceeds of sale of hospital and nursing home project notes or hospital and nursing home project bonds, to the extent provided in the resolution of the agency authorizing the issuance thereof, and (3) any other monies which may be made available to the agency for the purposes of such fund from any other source or sources. The monies held in or credited to the hospital and nursing home capital reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of hospital and nursing home project bonds of the agency secured by such reserve fund, as the same mature, sinking fund payments, the purchase of such hospital and nursing home project bonds of the agency, the payment of interest on such hospital and nursing home projects bonds of the agency, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that monies in such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the hospital and nursing home capital reserve fund requirement, except for the

purpose of paying principal and interest on the hospital and nursing home project bonds of the agency secured by such reserve fund maturing and becoming due and any sinking fund payments and for the payment of which other monies of the agency are not available. Any income or interest earned by, or increment to, the hospital and nursing home capital reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of the hospital and nursing home capital reserve fund below the hospital and nursing home capital reserve fund requirement.

(b) The agency shall not issue hospital and nursing home project bonds and hospital and nursing home project notes in an aggregate principal amount exceeding twenty-one billion eight hundred million dollars, excluding hospital and nursing home project bonds and hospital and nursing home project notes issued to refund outstanding hospital and nursing home projects bonds and hospital and nursing home project notes; provided, however, that upon any such refunding or repayment the total aggregate principal amount of outstanding bonds, notes or other obligations may be greater than twenty-one billion eight hundred million dollars only if the present value of the aggregate debt service of the refunding or repayment bonds, notes or other obligations to be issued shall not exceed the present value of the aggregate debt service of the bonds, notes or other obligations so to be refunded or repaid. For purposes hereof, the present values of the aggregate debt service of the refunding or repayment bonds, notes or other obligations and of the aggregate debt service of the bonds, notes or other obligations so refunded or repaid, shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds, notes or other obligations, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds, notes or other obligations from the payment dates thereof to the date of issue of the refunding or repayment bonds, notes or other obligations and to the price bid including estimated accrued interest or proceeds received by the agency including estimated accrued interest from the sale thereof. The agency shall not issue hospital and nursing home project bonds at any time secured by the hospital and nursing home capital reserve fund if upon issuance, the amount in the hospital and

nursing home capital reserve fund will be less than the hospital and nursing home capital reserve fund requirement, unless the agency, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which together with the amount then in such reserve fund, will be not less than the hospital and nursing home capital reserve fund requirement.

(c) To assure the continued operation and solvency of the agency for the carrying out of the public purposes of this act, provision is made in paragraph (a) of this subdivision for the accumulation in the hospital and nursing home capital reserve fund of an amount equal to the hospital and nursing home capital reserve fund requirement. In order further to assure the maintenance of the hospital and nursing home capital reserve fund, there shall be annually apportioned and paid to the agency for deposit in the hospital and nursing home capital reserve fund such sum, if any, as shall be certified by the chairman of the agency to the governor and director of the budget as necessary to restore such reserve fund to an amount equal to the hospital and nursing home capital reserve fund requirement. The chairman of the agency shall annually, on or before December first, make and deliver to the governor and director of the budget his certificate stating the sums, if any, required to restore the hospital and nursing home capital reserve fund to the amount aforesaid and the sums so certified, if any, shall be apportioned and paid to the agency during the then current state fiscal year. The principal amount of bonds secured by the hospital and nursing home capital reserve fund to which state funds are apportionable pursuant to this paragraph shall be limited to the total amount of bonds and notes outstanding on the effective date of this act, plus the total amount of bonds and notes contracted after the effective date of this act to finance projects in progress on the effective date of this act as determined by the New York state public authorities control board created pursuant to section fifty of the public authorities 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 paragraph, but in no event shall the total amount of bonds so secured by such a capital reserve fund or funds exceed two hundred forty million 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.

(d) In computing the hospital and nursing home capital reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund shall be invested shall be valued at par if purchased at par, or if purchased at other than par, at amortized value.

2. The agency shall create and establish one or more special funds (herein referred to as hospital and nursing home general reserve funds) and shall, to the extent provided in the applicable bond resolution of the agency authorizing the issuance of hospital and nursing home project bonds, pay into any such fund the fees and charges collected by the agency pursuant to subdivision twelve of section five of this act and any monies which the agency shall transfer from the hospital and nursing home capital reserve fund pursuant to the provisions of paragraph (a) of subdivision one of this section. Such monies and any other monies paid into a hospital and nursing home general reserve fund may, in the discretion of the agency, but subject to agreements with bondholders and noteholders, be used by the agency (a) for the repayment of advances from the state in accordance with the provisions of repayment agreements between the agency and the director of the budget, (b) to reimburse the department of health the reasonable costs of the services performed by the commissioner of health and the department of health pursuant to subdivision two of section seventeen of this act, (c) to pay all costs, expenses and charges of financing, including fees and expenses of trustees and paying agents, (d) for transfers to the hospital and nursing home capital reserve fund, (e) for the payment of principal and interest on hospital and nursing home project bonds and hospital and nursing home project notes issued by the agency when the same shall become due whether at maturity or on call for redemption and for the payment of any redemption premium required to be paid where such hospital and nursing home project bonds and hospital and nursing home project notes are redeemed prior to their stated maturities and any sinking fund payments, and to purchase hospital and nursing home project bonds or hospital and nursing home project notes issued by the agency, or (f) for such other corporate purposes of the agency as the agency in

its discretion shall determine and provide.

*** § 7-a. Secured hospital projects reserve funds and appropriations.**

1. Special hospital project bonds issued to finance the projects of eligible secured hospital borrowers shall be secured by (i) a first mortgage lien on such property as specified in accordance with subdivision twelve of section three of this act, (ii) funds and accounts established under the bond resolution, (iii) the secured hospital special debt service reserve fund or funds, (iv) the secured hospital capital reserve fund or funds, and (v) such service contract or contracts entered into in accordance with the provisions of subdivision four of this section.

2. (a) The agency shall establish a secured hospital special debt service reserve fund or funds and pay into such fund or funds moneys from the secured hospital fund up to an amount not to exceed an amount necessary to ensure the repayment of principal and interest due on any outstanding indebtedness on special hospital projects bonds. Funds deposited in such special debt service reserve fund or funds shall be used in the event that an eligible secured hospital borrower fails to make the required debt service payments on special hospital projects bonds, including, if necessary, payments due as a result of the failure to make principal and interest payments associated with the refinancing of indebtedness attributable to unmet bad debt and charity care losses.

(b) The agency shall establish a secured hospital fund for the purposes of paragraph (a) of this subdivision and for the support of eligible borrowers, and shall pay into such fund: (i) all funds required to be paid in accordance with the provisions of article twenty-eight of the public health law and regulations promulgated thereunder; (ii) any mortgage insurance premium assessed in an amount fixed at the discretion of the agency, upon the issuance of special hospital project bonds; (iii) any income or interest earned on other reserve funds which the agency elects to transfer to the secured hospital fund; and (iv) any other moneys which may be made available to the agency for the purposes of such fund from any other source or sources. Moneys paid into the secured hospital fund shall, in the discretion of the agency, but

subject to agreements with bondholders, be used to fund the special debt service reserve fund or funds at a level or levels which minimize the need for use of the capital reserve fund or funds in the event of the failure of an eligible secured hospital borrower to make the required debt service payments on special hospital project bonds.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, the state hereby expressly reserves the right to modify or repeal the provisions of article twenty-eight of the public health law.

3. The agency shall establish a secured hospital capital reserve fund or funds which shall be funded at an amount or amounts equal to the lesser of either: (i) the maximum amount of principal, sinking fund payments and interest due in any succeeding year on outstanding special hospital project bonds or (ii) the maximum amount to insure that such bonds will not be considered arbitrage bonds under the Internal Revenue Code of 1986, as amended. The capital reserve fund shall be funded by the sale of special hospital project bonds or from such other funds as may be legally available for such purpose, as provided for in the bond resolution or resolutions authorizing the issuance of such bonds.

4. (a) Notwithstanding the provisions of any general or special law to the contrary, and subject to the making of annual appropriations therefor by the legislature, in order to provide adequate health care to persons of low income who otherwise would be unable to secure the same and to assist the agency in the undertaking and financing of mortgage loans to eligible secured hospital borrowers as defined in subdivision six-b of section three of this act and in consideration of the undertaking thereof and the benefits to be derived therefrom by the people of the state, the director of the budget is authorized in any state fiscal year to enter into one or more service contracts, none of which shall exceed thirty years in duration, with the agency, upon such terms as the director of the budget and the agency agree, so as to provide annually to the agency in the aggregate such sum, if any, as necessary to meet the debt service payments due on outstanding special hospital project bonds in any year if the funds provided for in this section are inadequate.

(b) Any service contract entered into pursuant to paragraph (a) of

this subdivision shall provide (i) that the obligation of the director of the budget or of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available and that no liability shall be incurred by the state beyond the moneys available for the purpose, and that such obligation is subject to annual appropriation by the legislature; and (ii) that the amounts paid to the agency pursuant to any such contract may be used by it solely to pay or to assist in financing costs of mortgage loans to eligible secured hospital borrowers as defined in subdivision six-b of section three of this act.

5. The agency shall not issue special hospital project bonds in an aggregate principal amount exceeding one billion nine hundred seventy-four million two hundred fifty thousand dollars, excluding special hospital project bonds issued to refund outstanding special hospital project bonds issued for such purposes; provided, however, that upon any such refunding or repayment the total aggregate principal amount of outstanding bonds, notes or other obligations may be greater than one billion nine hundred seventy-four million two hundred fifty thousand dollars only if the present value of the aggregate debt service of the refunding or repayment bonds, notes or other obligations to be issued shall not exceed the present value of the aggregate debt service of the bonds, notes or other obligations so to be refunded or repaid. For purposes hereof, the present values of the aggregate debt service of the refunding or repayment bonds, notes or other obligations and of the aggregate debt service of the bonds, notes or other obligations so refunded or repaid, shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds, notes or other obligations, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds, notes or other obligations from the payment dates thereof to the date of issue of the refunding or repayment bonds, notes or other obligations and to the price bid including estimated accrued interest or proceeds received by the agency including estimated accrued interest from the sale thereof.

* NB Expired December 31, 2015

*** § 7-c. Secured hospital projects reserve funds and appropriations.**

1. Special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act, issued to refinance the projects of eligible secured hospital borrowers, as defined in subdivision six-c of section three of this act, shall be secured by (a) a mortgage lien, (b) funds and accounts established under the bond resolution, (c) the secured hospital special debt service reserve fund or funds, (d) the secured hospital capital reserve fund or funds, and (e) such service contract or contracts entered into in accordance with the provisions of subdivision four of this section.

2. (a) The agency shall establish a secured hospital special debt service reserve fund or funds and pay into such fund or funds moneys from the secured hospital fund up to an amount not to exceed an amount necessary to ensure the repayment of principal and interest due on any outstanding indebtedness on special hospital projects bonds, as defined in paragraph (d-1) of subdivision three of section three of this act.

Funds deposited in such secured hospital special debt service reserve fund or funds shall be used in the event that an eligible secured hospital borrower, as defined in subdivision six-c of section three of this act, fails to make payments in an amount sufficient to pay the required debt service payments on special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act.

(b) The agency shall, for the purposes of paragraph (a) of this subdivision and for the support of eligible secured hospital borrowers, pay into the secured hospital fund currently established and maintained by the agency: (i) all funds required to be paid in accordance with the provisions of article twenty-eight of the public health law and regulations promulgated in such article; (ii) any mortgage insurance premium assessed in an amount fixed at the discretion of the agency, upon the issuance of special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act; (iii)

any income or interest earned on other reserve funds which the agency elects to transfer to the secured hospital fund; and (iv) any other moneys which may be made available to the agency from any other source or sources. Moneys paid into the secured hospital fund shall, in the discretion of the agency, but subject to agreements with bondholders, be used to fund the special debt service reserve fund or funds at a level or levels which minimize the need for use of the capital reserve fund or funds in the event of the failure of an eligible secured hospital borrower, as defined in subdivision six-c of section three of this act, to make the required debt service payments on special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, the state hereby expressly reserves the right to modify or repeal the provisions of article twenty-eight of the public health law.

3. The agency shall establish a secured hospital capital reserve fund or funds which shall be funded at an amount or amounts equal to the lesser of either: (a) the maximum amount of principal, sinking fund payments and interest due in any succeeding year on outstanding special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act, or (b) the maximum amount to ensure that such bonds will not be considered arbitrage bonds under the Internal Revenue Code of 1986, as amended. The capital reserve fund shall be funded by the sale of special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act, or from such other funds as may be legally available for such purpose, as provided for in the bond resolution or resolutions authorizing the issuance of such bonds.

4. (a) Notwithstanding the provisions of any general or special law to the contrary, and subject to the making of annual appropriations therefor by the legislature in order to refinance mortgage loans to eligible secured hospital borrowers, as defined in subdivision six-c of section three of this act, the director of the budget is authorized in any state fiscal year to enter into one or more service contracts, which service contracts shall not exceed the term of the special hospital

project bonds, issued for the benefit of the eligible secured hospital borrower, upon such terms as the director of the budget and the agency agree, so as to provide annually to the agency in the aggregate such sum, if any, as necessary to meet the debt service payments due on outstanding special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act, in any year if the funds provided for in this section are inadequate.

(b) Any service contract entered into pursuant to paragraph (a) of this subdivision shall provide (i) that the obligation of the director of the budget or of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available and that no liability shall be incurred by the state beyond the moneys available for such purpose, and that such obligation is subject to annual appropriation by the legislature; and (ii) that the amounts paid to the agency pursuant to any such contract may be used by it solely to pay or to assist in financing costs of mortgage loans to eligible secured hospital borrowers, as defined in subdivision six-c of section three of this act.

5. The agency shall not issue special hospital project bonds, as defined in paragraph (d-1) of subdivision three of section three of this act, except to refinance mortgage loans for eligible secured hospital borrowers as provided in section three of this act.

* NB Repealed December 31, 2015

§ 8. Health facilities reserve funds and appropriations. 1. (a) For the purposes of the issuance by the agency of health facilities bonds, the term "health facilities reserve fund requirement" shall mean, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any succeeding calendar year, of annual debt service payments of the agency, such annual debt service payments for any calendar year being an amount of money equal to the aggregate of (i) all interest payable during such calendar year on all health facilities bonds of the agency then outstanding on said date of computation, plus (ii) the principal amount

of all health facilities bonds of the agency then outstanding on said date of computation which mature during such calendar year, plus (iii) the amount of all sinking fund payments payable during such calendar year with respect to all health facilities bonds of the agency outstanding on said date of computation; and the term "sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund for the amortization of such term bonds. The agency may create and establish one or more additional reserve funds to be known as health facilities reserve funds and may pay into such reserve funds (1) any monies appropriated and made available by the state for the purposes of such funds, (2) any proceeds of sale of health facilities notes or health facilities bonds, to the extent provided in the resolution of the agency authorizing the issuance thereof, and (3) any other monies which may be made available to the agency for the purposes of such funds from any other source or sources. The monies held in or credited to any health facilities reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of health facilities bonds of the agency secured by such reserve fund, as the same mature, sinking fund payments, the purchase of such health facilities bonds of the agency, and the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that monies in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the health facilities reserve fund requirement, except for the purpose of paying principal and interest on the health facilities bonds of the agency secured by such reserve fund maturing and becoming due and any sinking fund payments and for the payment of which other monies of the agency are not available. Any income or interest earned by, or increment to, any such health facilities reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of such health facilities reserve fund below the health facilities reserve fund requirement.

(b) The agency shall not issue health facilities bonds and health facilities notes, municipal hospital bonds, municipal hospital notes, municipal nursing home bonds and municipal nursing home notes in an

aggregate principal amount exceeding two billion dollars, excluding health facilities bonds and health facilities notes issued to refund outstanding health facilities bonds or health facilities notes. The agency shall not issue health facilities bonds at any time secured by a health facilities reserve fund if upon issuance, the amount in the health facilities reserve fund will be less than the health facilities reserve fund requirement, unless the agency, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which together with the amount then in such reserve fund, will be not less than the health facilities reserve fund requirement.

(c) In computing any health facilities reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund shall be invested shall be valued at par if purchased at par, or if purchased at other than par, at amortized value.

2. (a) The agency shall create and establish one or more special accounts (herein referred to as health facilities income account) and shall pay into such accounts any monies which the agency shall receive in payment of rentals due under one or more leases or subleases entered into with a municipality pursuant to section five and any other monies which the agency shall receive from a municipality as security for or in payment of such rentals. Such monies and any other monies paid into such health facilities income accounts, may, in the discretion of the agency, but subject to agreements with the holders of health facilities bonds and health facilities notes, be used by the agency (1) for the repayment of advances, if any, from the state to the agency in connection with health facilities, and any real property required therefor, in accordance with the provisions of repayment agreements related thereto which have been entered into with the director of the budget, (2) to pay all costs, expenses and charges of financing the health facilities applicable to such account or accounts including fees and expenses of trustees and paying agents, (3) to pay the administrative and other expenses of the agency allocable to the services performed by the agency in the financing of the construction, acquisition, reconstruction, rehabilitation or improvement of health facilities and matters relating thereto, (4) for the payment of the principal of and interest on health

facilities bonds or health facilities notes issued by the agency when the same shall become due whether at maturity or by call for redemption and for the payment of any redemption premium required to be paid where such bonds or notes are redeemed prior to their stated maturities, and any sinking fund payments, and to purchase health facilities bonds or health facilities notes issued by the agency, or (5) for such other corporate purposes of the agency relating to the carrying out of its functions, powers and duties with respect to the financing of the construction, acquisition, reconstruction, rehabilitation or improvement of health facilities as the agency in its discretion shall determine and provide.

(b) To assure the continued payment of rentals due under one or more leases or subleases entered into with a municipality pursuant to section five, the agency shall make and deliver to the appropriate chief fiscal officer of the municipality a certificate setting forth the amount, if any, due and not paid to the agency under such lease or sublease with such municipality within five days of the due date. In the event of the failure or inability of the municipality to pay over the stated amount to the agency within ten days of receipt of such certificate, the agency shall forthwith make and deliver to the comptroller of the state of New York, the director of the budget of the state of New York and the commissioner of health of the state of New York a further certificate restating the amount due and not paid, and such amount shall be paid over to the agency, upon the warrant of the comptroller on vouchers certified as correct by the commissioner of health, out of the next payment of state aid to such municipality pursuant to section 368-a of the social services law or funds appropriated for the purpose of making payment on behalf of such municipality pursuant to section 367-b of such law. To the extent any such payments to the agency are made from state aid payments pursuant to section 368-a of such law, the amount of such payments shall be deducted from the corresponding apportionment of state aid otherwise credited to such municipality, and the state shall not be obligated to pay, nor shall such municipality be entitled to receive, by virtue of such deduction, any additional or increased apportionment or payment of state aid pursuant to section 368-a of the social services law. To the extent any such payments to the agency are made from funds appropriated for the purpose of making payments on behalf of such municipality pursuant to section 367-b of such law, the amount of such

payments may be deducted from any other payments of state assistance to such municipality under the social services law and the state shall not be obligated to pay, nor shall the municipality be entitled to receive, by virtue of such deduction, any additional or increased apportionment or payment of such state assistance, provided, however, that nothing contained in this sentence shall be construed to limit, impair, impede, or otherwise adversely affect in any manner the rights or remedies of the purchasers and holders and owners of any bonds or notes of the state or any agency or instrumentality, public benefit corporation or political subdivision thereof under which such purchasers and holders and owners have any right of payment of such bonds or notes by recourse to such state assistance monies.

§ 9. Special provisions relating to the municipal health facilities improvement program. Notwithstanding any other provisions of law, general, special or local, or any provision of any charter or ordinance:

1. A municipality is hereby authorized to execute and deliver to the agency for such consideration as may be determined by the municipality, the agency and the health and mental hygiene facilities improvement corporation, but not to exceed the cost of acquisition thereof to the municipality and the cost of improvements thereon, a lease for a term not exceeding fifty years or a quit claim deed conveying to the agency all right, title and interest of such municipality in and to real property, for the purpose of constructing, reconstructing, rehabilitating, or improving one or more health facilities pursuant to this act and the health and mental hygiene facilities improvement act for subsequent lease or sublease to such municipality, in accordance with the terms of any agreement entered into pursuant to this act and the health and mental hygiene facilities improvement act.

2. A municipality is hereby authorized to lease or sublease from the agency the health facilities acquired, constructed, reconstructed, rehabilitated or improved pursuant to this act and the facilities development corporation act in accordance with the terms of any agreement entered into pursuant to this act and the facilities

development corporation act. At such time as all rentals due or to become due to the agency pursuant to the terms of any such lease or sublease have been paid or such lease or sublease is terminated pursuant to the provisions thereof, the jurisdiction of the agency over the real property leased or conveyed pursuant to this section, together with the improvements thereon shall cease and all interest real and personal in such real property and improvements vested in the agency shall vest in the municipality with right of re-entry thereon.

3. No real property interest therein shall be acquired by the agency pursuant to this section unless title thereto shall have been approved by the attorney general.

4. The attorney general shall pass upon the form and sufficiency and manner of execution of any deed of conveyance and of any lease or sublease to which the agency and a municipality are parties, and the same shall not be effective unless approved by him.

5. In the event that the agency shall fail within five years from the date of a lease or conveyance authorized pursuant to this section to construct, reconstruct, rehabilitate or improve the health facilities thereon for which the lease or conveyance was made, as provided for in any agreement entered into pursuant to this act and the health and mental hygiene facilities improvement act, or in the event that such health facilities shall cease to be used for the purposes intended, then and in either event but subject to the terms of any lease, sublease or other agreement between the agency and the municipality, such real property and any health facilities thereon shall revert to the municipality with right of re-entry thereupon and such lease or deed shall be made subject to such conditions; provided, however, that as a condition precedent to the exercise of such right of re-entry the municipality shall pay to the agency an amount equal to the purchase price of such real property, the depreciated cost of any health facilities constructed, reconstructed, rehabilitated or improved, and all other costs of the agency incident to the acquisition of such real property and the financing of construction, reconstruction, rehabilitation or improvement relating to such facilities, all as

provided in the aforesaid lease, sublease or other agreement entered into with such municipality.

6. In the event that the agency shall determine that any portions of the real property leased or conveyed pursuant to this section are in excess of the real property needed to construct, reconstruct, rehabilitate or improve the facility or facilities thereon for which the conveyance was made, as provided in any agreement entered into pursuant to this act and the health and mental hygiene facilities improvement act, the agency may terminate its lease with respect to such excess portions of such real property or reconvey such excess portions to the municipality, provided, however, that the municipality shall pay to the agency an amount equal to the consideration, if any, paid by the agency to such municipality allocable to such excess real property and such other costs of the the agency as are incident to the acquisition of such excess real property, all as may be approved by such municipality and the agency. Any monies so paid to the agency shall be used and applied, subject to the provisions of any contract with noteholders and bondholders, for the sole purpose of paying costs and expenses of the agency incident to the financing of the health facilities, to be constructed, reconstructed, rehabilitated or improved on such other portions of the real property as shall have been leased or conveyed to the agency pursuant to this section.

7. The cost of construction, acquisition, reconstruction, rehabilitation or improvement of health facilities undertaken by the agency pursuant to this act and the health and mental hygiene facilities improvement act may include the cost of acquisition of any real property leased or conveyed to the agency in accordance with this section and the cost of the original furnishings, equipment, machinery and apparatus needed to furnish and equip such facilities upon the completion of the work. The agency shall have power to acquire or lease and to hold real property required for the construction, acquisition, reconstruction, rehabilitation or improvement of the health facilities undertaken by the agency pursuant to this act and the health and mental hygiene facilities improvement act and to provide the original furnishings, equipment, machinery and apparatus needed to furnish and equip such facilities upon

the completion of work and to issue its bonds and notes to provide sufficient funds to pay the cost thereof.

8. A municipality is hereby authorized and empowered, in connection with any lease, sublease or other agreement with the agency to which such municipality is a party, and subject to such agreements with third parties as may then exist, to:

(a) pledge or assign to the agency all or any portion of the revenues and monies received or to be received by the municipality, which may be available for the purpose of paying rentals for the use of the health facilities constructed, acquired, reconstructed, rehabilitated or improved under such agreement, so that the payment of such rentals may be fully secured and protected;

(b) use and dispose of such revenues and monies, or any portions thereof, for the purpose of defraying, in whole or in part (1) the cost of acquiring any real property for the purpose of constructing, acquiring, reconstructing, rehabilitating or improving facilities thereon which may be constructed, acquired, reconstructed, rehabilitated or improved by the agency pursuant to this act and the health and mental hygiene facilities improvement act, (2) the cost of financing the construction, acquisition, reconstruction, rehabilitation or improvement of such facilities, and (3) the cost of acquiring the original furnishings, equipment, machinery and apparatus needed to furnish and equip such facilities upon the completion of the work;

(c) set aside rental reserves and to agree to the maintenance, regulation and disposition thereof;

(d) agree to limitations on the purposes to which the proceeds of sale of health facilities notes or health facilities bonds may be applied and to the pledging of such proceeds to secure the payment of health facilities notes or health facilities bonds or of any issue thereof;

(e) agree to limitations on the making of additional leases, subleases or agreements with the agency or with others, and the terms upon which such additional leases, subleases or agreements may be made;

(f) upon receipt of any notice of assignment by the agency of any such lease, sublease or other agreement with the agency, or of any of its rights under such lease, sublease or other agreement, recognize and give effect to such assignment and to pay the assignee thereof rentals or

other payments then due or which may become due under any such lease, sublease or other agreement which has been so assigned by the agency; and

(g) agree to any other matters, of like or different character, which in any way affect the security or protection of the rental payments required to be made under the terms of such lease, sublease or other agreement with the agency.

9. A municipality is hereby authorized and empowered, to enter into a lease, sublease, license or other operating agreement with any other person, firm or corporation to operate or to sublease, license or otherwise arrange for the operation of, the health facilities acquired, constructed, reconstructed, rehabilitated or improved pursuant to this act.

§ 9-a. Special provisions relating to mental health services facilities improvement bonds and notes. 1. Definitions. For the purposes of this act:

a. "Mental health services facility" shall mean a building, a unit within a building, a laboratory, a classroom, a housing unit, a dining hall, an activities center, a library, real property of any kind or description, or any structure on or improvement to real property of any kind or description, including fixtures and equipment which may or may not be an integral part of any such building, unit, structure or improvement, a walkway, a roadway or a parking lot, and improvements and connections for water, sewer, gas, electrical, telephone, heating, air conditioning and other utility services, or a combination of any of the foregoing, whether for patient care and treatment or staff, staff family or service use, located at or related to any psychiatric center, any developmental center, or any state psychiatric or research institute or other facility now or hereafter established under the state department of mental hygiene. A mental health services facility shall also mean and include a residential care center for adults, a community residence, a "community mental health and developmental disabilities facility", and a state or voluntary operated treatment facility for use in the conduct of

an alcoholism or substance abuse treatment program as defined in the mental hygiene law, unless such residential care center for adults, community mental health and developmental disabilities facility or alcoholism or substance abuse facility is expressly excepted or the context clearly requires otherwise. The definition contained in this subdivision shall not be construed to exclude therefrom a facility, whether or not owned or leased by a voluntary agency, to be made available under lease, or sublease, from the facilities development corporation to a voluntary agency at the request of the commissioners of the offices and directors of the divisions of the department of mental hygiene having jurisdiction thereof for use in providing services in a residential care center for adults, community mental health and developmental disabilities services, or for use in the conduct of an alcoholism or substance abuse treatment program. For purposes of this section mental health services facility shall also mean mental hygiene facility as defined in subdivision ten of section three of the facilities development corporation act and shall also include facilities for: (i) comprehensive psychiatric emergency programs and/or psychiatric inpatient programs or other similar programs, including but not limited to residential treatment facilities, under the auspice of municipalities and other public and not-for-profit agencies, licensed pursuant to article thirty-one of the mental hygiene law and/or article twenty-eight of the public health law; and (ii) licensed or unlicensed permanent, transitional, or emergency housing for mentally ill persons under the auspice of municipalities and other public and not-for-profit agencies, approved by the commissioner of the office of mental health, pursuant to article forty-one of the mental hygiene law.

b. "Mental health services facilities improvement bonds" and "mental health services facilities improvement notes" shall mean bonds and notes, respectively, issued by the agency pursuant to subdivision two of this section.

c. "Mental health services facilities improvement program" shall mean a program undertaken by the agency and the facilities development corporation for the purpose of financing, refinancing, designing, constructing, acquiring, reconstructing, rehabilitating or improving

mental hygiene facilities and mental health services facilities or causing such facilities to be financed, refinanced, designed, constructed, acquired, reconstructed, rehabilitated or improved.

2. Additional powers of the agency. a. The agency shall have power to enter into one or more lease, sublease, loan or other financing agreements with the directors of the facilities development corporation, or any successor agency, for the purpose of providing the financing or refinancing for or for designing, constructing, acquiring, reconstructing, rehabilitating and improving mental health services facilities at new or existing mental health services facilities, or on any real property or interest in real property owned by or conveyed from said corporation, or any successor agency, or any voluntary agency, or for the refinancing of any such facilities for which bonds have previously been issued by the agency or by the state housing finance agency and are outstanding and to cause by the providing of such financing such facilities to be designed, constructed, acquired, reconstructed, rehabilitated or improved or financed or refinanced by the directors of the said corporation, or any successor agency, all in accordance with one or more lease, sublease, loan or other financing agreements entered into between the agency and the directors of the said corporation pursuant to subdivision 4 of section 9 of the facilities development corporation act.

b. The agency shall have power and is hereby authorized from time to time to issue negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount as, in the opinion of the agency, shall be necessary, after taking into account other moneys which may be available for the purpose, to provide sufficient funds to the facilities development corporation, or any successor agency, for the financing or refinancing of or for the design, construction, acquisition, reconstruction, rehabilitation or improvement of mental health services facilities pursuant to paragraph a of this subdivision, the payment of interest on mental health services improvement bonds and mental health services improvement notes issued for such purposes, the establishment of reserves to secure such bonds and notes, the cost or premium of bond insurance or the costs of any

financial mechanisms which may be used to reduce the debt service that would be payable by the agency on its mental health services facilities improvement bonds and notes and all other expenditures of the agency incident to and necessary or convenient to providing the facilities development corporation, or any successor agency, with funds for the financing or refinancing of or for any such design, construction, acquisition, reconstruction, rehabilitation or improvement and for the refunding of mental hygiene improvement bonds issued pursuant to section 47-b of the private housing finance law; provided, however, that the agency shall not issue mental health services facilities improvement bonds and mental health services facilities improvement notes in an aggregate principal amount exceeding fourteen billion two hundred ninety-nine million four hundred fifty-two thousand dollars \$14,299,452,000, excluding bonds issued after April first, two thousand twenty-five to (i) fund one or more debt service reserve funds, (ii) pay costs of issuance of such bonds, and (iii) refund or otherwise repay such bonds or notes previously issued, provided that nothing herein shall affect the exclusion of refunding debt issued prior to such date. The director of the budget shall allocate the aggregate principal authorized to be issued by the agency among the office of mental health, office for people with developmental disabilities, and the office of addiction services and supports, in consultation with their respective commissioners to finance bondable appropriations previously approved by the legislature.

3. Application of other provisions of article. Except as provided in this section, the other provisions of this act shall apply to mental health services facilities improvement bonds and mental health services facilities improvement notes issued by the agency pursuant to this section, provided, however, that such bonds and notes, subject to any agreements with the holders of particular bonds or notes pledging any specified portions thereof, shall be secured by a pledge thereof of (a) payments made to the agency with respect to mental health services facilities financed or refinanced with the proceeds of such bonds and notes, and (b) any other assets, moneys or accounts pledged or assigned to the agency as security for such payments. However, no resolution or resolutions authorizing mental health services facilities improvement

bonds or mental health services facilities improvement notes shall (A) pledge all or any part of the fees and charges made or received by the agency pursuant to paragraphs (a) through (d) of subdivision three of section six of this act in connection with the making of mortgage loans or commitments therefor, or all or any part of the moneys received in payment of such mortgage loans and interest thereon, (B) pledge all or any part of the mortgages of the agency or obligations securing the same, (C) provide as to the use and disposition of the gross income from mortgages owned by the agency or as to the payment of the principal of mortgages owned by the agency, (D) pledge all or any part of the rentals paid to the agency under leases, subleases or other agreements for health facilities entered into by the agency in accordance with this article, or (E) pledge or assign all or any part of any other assets, moneys or accounts pledged or assigned to the agency as security for the payment of rentals for such health facilities.

4. Mental health services facilities fund. The agency shall create and establish one or more special funds (herein referred to as mental health services facilities funds) and shall pay into any such fund any moneys which the agency shall receive in payment in accordance with one or more agreements entered into pursuant to subdivision 4 of section 9 of the facilities development corporation act and any other moneys which the agency shall receive from the facilities development corporation pursuant to such agreements. Such moneys and any other moneys paid into the mental health services facilities fund may, in the discretion of the agency, but subject to agreements with the holders of mental health services facilities improvement bonds and mental health services facilities improvement notes, be used by the agency (a) for the repayment of advances, if any, from the state to the agency in connection with mental health services facilities, and any real property or interest in real property required therefor, in accordance with the provisions of repayment agreements related thereto which have been entered into with the director of the budget, (b) to pay all costs, expenses and charges of financing and refinancing mental health services facilities including fees and expenses of trustees and paying agents and credit enhancement fees, (c) to pay the administrative and other expenses of the agency allocable to the services performed by the agency

in the financing or refinancing of or the design, construction, acquisition, reconstruction, rehabilitation or improvement of mental health services facilities and matters relating thereto, (d) for the payment of the principal of and interest on mental health services facilities improvement bonds or mental health services facilities improvement notes issued by the agency when the same shall become due whether at maturity or by call for redemption and for the payment of any redemption premium required to be paid where such bonds or notes are redeemed prior to their stated maturities, and to purchase mental health services facilities improvement bonds or mental health services facilities improvement notes issued by the agency, or (e) for such other corporate purposes of the agency relating to the carrying out of its functions, powers and duties with respect to the financing or refinancing of the design, construction, acquisition, reconstruction, rehabilitation or improvement of mental health services facilities as the agency in its discretion shall determine and provide.

5. The agency may create and establish one or more special funds to be known as mental health services facilities improvement capital reserve funds and may pay into such reserve funds (a) any moneys appropriated and made available by the state for the purposes of such funds, (b) any proceeds of the sale of mental health services facilities improvement notes or bonds, to the extent provided in the resolution of the agency authorizing the issuance thereof, and (c) any other moneys which may be made available to the agency for the purposes of such funds from any other source or sources. The amount in each such capital reserve fund shall be determined by resolution of the agency provided, however, that such capital reserve fund shall not exceed the maximum amount of payments becoming due in any succeeding calendar year.

The moneys held in or credited to the capital reserve funds established under this subdivision except as hereinafter provided, shall be used solely to the extent any payments as they become due pursuant to one or more agreements referred to in subdivision two of this section are not made or provided for by the facilities development corporation, provided, however, that the moneys in such funds shall, subject to agreement with the bondholders, not be withdrawn therefrom at any time

in such amount as would reduce the amount thereof to less than the amount determined by resolution of the agency except for the purpose of making such payments becoming due under the agreements with the facilities development corporation and for which other moneys are not available.

Any income or interest earned by, or increment to, any such mental health services improvement facilities capital reserve fund due to the investment thereof may be transferred to the mental health services facilities fund to the extent it does not reduce the amount of such mental health services capital reserve fund below the reserve requirement determined by resolution of the agency.

6. Notwithstanding any other provision of law, general or special:

a. Any public corporation or officer responsible for the acquisition of real property or any interest in real property or the planning, supervision or administration of facilities thereon which may be designed, constructed, acquired, reconstructed, rehabilitated or improved by the agency pursuant to this act is hereby authorized for and on behalf and in the name of the people of the state of New York, to execute and deliver to the agency, for such consideration, if any, as may be determined by such public corporation or officer and the agency, but not to exceed the cost of acquisition thereof and the cost of improvement thereon, a lease for a term not exceeding thirty years or a quitclaim deed conveying to the agency the title to or any interest in real property and to any real property or interest in real property of the people of the state of New York acquired by such public corporation or officer for such facilities, and in and to any of the improvements thereon, for the purpose of designing, constructing, reconstructing, rehabilitating or improving thereon one or more facilities pursuant to this act for lease or sublease to any such public corporation or officer, in accordance with the terms of an agreement entered into among them in accordance with law. The agency is hereby authorized to accept any such lease or conveyance from such public corporation or officer or from any voluntary agency, to lease or sublease such real property, any interest in real property, improvements and facilities to such public

corporation or officer, and to hold the same subject to the terms of any such lease, conveyance, sublease or other agreement, and such public corporation or officer is hereby authorized, with the approval of the director of the budget, to lease or sublease any such real property, interests in real property, or improvements of the facilities designed, constructed, reconstructed, rehabilitated or improved thereon pursuant to this act or other provisions of law, and to hold such real property, any interests in real property, improvements and facilities subject to the terms of any such lease, sublease or other agreement.

b. (i) In the event that the agency shall fail, within five years from the date of a lease or conveyance authorized pursuant to subdivision 1 of this section, to construct, reconstruct, rehabilitate or improve the facility or facilities thereon for which the conveyance was made, as provided for in a lease, sublease, loan or other financing agreement entered into with such public corporation or officer, or in the event that such facility or facilities shall cease to be used for the purposes intended, then and in either event but subject to the terms of any lease, sublease, loan or other financing agreement undertaken by the agency, such real property, interests in real property, and the improvements and facilities thereon, shall revert to the people of the state of New York with right of re-entry thereupon, and such lease or deed shall be made subject to such conditions. Provided, however, that as a condition precedent to the exercise of such right of re-entry the agency shall be paid an amount equal to the purchase price of such real property, any interest in real property, and improvements, the depreciated cost of any facility or facilities constructed, reconstructed, rehabilitated or improved thereon, and all other costs of the agency incident to the acquisition of such real property, interest in real property, and the financing of construction, reconstruction, rehabilitation or improvement relating to such facility or facilities, all as provided in the aforesaid lease, sublease, loan or other financing agreement entered into with such public corporation or officer. It is further provided that for the Corona Unit of the Bernard M. Fineson developmental disabilities services office, the agency may be paid an amount less than or equal to the purchase price of the real property, any interest in real property, and improvements, the

depreciated cost of the facility constructed, reconstructed, rehabilitated, demolished or improved thereon, and all other costs of the agency incident to the acquisition of the real property, interest in real property and the financing of construction, reconstruction, rehabilitation, demolition or improvement relating to the facility, all as provided in the aforesaid lease, sublease, loan or other financing agreement entered into with such public corporation or officer.

(ii) In the event that the agency shall determine that any portions of the real property or interest in real property leased or conveyed pursuant to subdivision 1 of this section are in excess of the real property or interest in real property needed to construct, reconstruct, rehabilitate or improve the facility or facilities thereon for which the conveyance was made, as provided in a lease, sublease, loan or other financing agreement entered into with such public corporation or officer or any voluntary agency, the agency may terminate its lease with respect to such excess portions of such real property or interest in real property or reconvey such excess portions to the people of the state of New York or to such voluntary agency. Provided, however, that the state of New York or such public corporation or officer or such voluntary agency shall pay to the agency an amount equal to the consideration, if any, paid by the agency to such public corporation or officer or such voluntary agency allocable to such excess real property or interest in real property and such other costs of the agency as are incident to the acquisition of such excess real property or interest in real property, all as may be approved by such public corporation or officer or such voluntary agency and the agency. Any monies so paid to the agency shall be used and applied, subject to the provision of any contract with noteholders and bondholders, for the sole purpose of paying costs and expenses of the agency incident to the financing of the facility or facilities to be designed, constructed, reconstructed, rehabilitated or improved on such other portions of the real property or interest in real property as shall have been leased or conveyed to the agency pursuant to subdivision 1 of this section. It is further provided that for the Corona unit of the Bernard M. Fineson developmental disabilities services office, the state of New York or such public corporation or officer or such voluntary agency may but is not required to pay to the agency an amount less than or equal to the consideration, if any, paid

by the agency to such public corporation or officer or such voluntary agency allocable to such excess real property or interest in real property and such other costs of the agency as are incident to the acquisition of such excess real property or interest in real property, all as may be approved by such public corporation or officer or such voluntary agency and the agency. Any monies so paid to the agency shall be used and applied, subject to the provision of any contract with noteholders and bondholders, for the sole purpose of paying costs and expenses of the agency incident to the financing of the Corona unit of the Bernard M. Fineson developmental disabilities services office to be designed, constructed, reconstructed, rehabilitated, demolished or improved on such other portions of the real property or interest in real property as shall have been leased or conveyed to the agency pursuant to subdivision 1 of this section.

c. The attorney general shall pass upon the form, sufficiency and manner of execution of any deed of conveyance and of any lease or sublease of lands and of any loan or other financing agreement authorized to be given under subdivision one of this section, excluding any lease or sublease given by a voluntary agency to the agency, and the same shall not be effective unless so approved by him.

d. The cost of design, construction, acquisition, reconstruction, rehabilitation or improvement of facilities undertaken by the agency pursuant to this act may include the cost of acquisition of any real property, interest in real property and improvements leased or conveyed to the agency in accordance with subdivision 1 of this section and the cost of the original furnishings, equipment, machinery and apparatus determined by the responsible public corporation or officer to be needed to furnish and equip such facilities upon the completion of work. The agency shall have power to acquire or lease and to hold real property, any interest in real property and improvements required for the design, construction, acquisition, reconstruction, rehabilitation or improvement of facilities undertaken by the agency pursuant to this act and to provide the original furnishings, equipment, machinery and apparatus determined by the responsible public corporation or officer to be needed to furnish and equip such facilities upon the completion of work and to

issue its bonds and notes to provide sufficient funds to pay or refinance the cost thereof.

e. Any public corporation or officer referred to in paragraph a of this subdivision is hereby authorized and empowered, in connection with any lease, sublease, loan or other financing agreement with the agency to which such public corporation or officer is a party, and subject to such agreements with third parties as may then exist, to:

(i) pledge or assign to the agency all or any portion of the revenues and monies received or to be received by such public corporation or officer, which may be available for the purpose of making payments for the use of the facilities constructed, acquired, reconstructed, rehabilitated or improved or to be constructed, acquired, reconstructed, rehabilitated or improved under such agreement, so that such payments may be fully secured and protected; provided, however, that such pledge or assignment shall not extend to appropriations or advances from the state except appropriations or advances made specifically for the purpose of paying all or any part of such payments;

(ii) use and dispose of such revenues and monies, or any portions thereof, for the purpose of defraying, in whole or in part, (1) the cost of acquiring any real property or interest in real property for the purpose of constructing, acquiring, reconstructing, rehabilitating or improving facilities thereon which may be constructed, acquired, reconstructed, rehabilitated or improved by the agency pursuant to this act, (2) the cost of financing the construction, acquisition, reconstruction, rehabilitation or improvement of such facilities, and (3) the cost of acquiring the original furnishings, equipment, machinery and apparatus needed to furnish and equip such facilities upon the completion of work;

(iii) set aside reserves and to agree to the maintenance, regulation and disposition thereof;

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

(v) agree to limitations on the making of additional leases, subleases, loans or other financing agreements with the agency or with

others, and the terms upon which such additional leases, subleases, loans or other financing agreements may be made;

(vi) recognize and give effect to such assignment, upon receipt of any notice of assignment by the agency of any such lease, sublease, loan or other financing agreement with the agency, or of any of its rights under such lease, sublease, loan or other financing agreement, and to pay the assignee thereof payments then due or which may become due under any such lease, sublease, loan or other financing agreement which has been so assigned by the agency; and

(vii) agree to any other matters, of like or different character, which in any way affect the security or protection of the payments required to be made under the terms of such lease, sublease, loan or other financing agreement with the agency.

f. (i) Any mental hygiene facility, as defined in this section, which has been constructed, acquired, reconstructed, rehabilitated or improved, in whole or in part, out of monies advanced or deemed to have been advanced to the facilities development corporation, the state department of mental hygiene or the office of general services, since April 1, 1963 pursuant to appropriations or reappropriations as advances from the capital projects fund, and the real property or any interest in real property upon which such a facility is located, may be leased or conveyed to the agency by the facilities development corporation or the commissioner of mental hygiene in accordance with the provisions of subdivisions 1 through 5 of this section, notwithstanding that the construction, acquisition, reconstruction, rehabilitation or improvement of such facility may have been completed by the facilities development corporation, the state department of mental hygiene or the office of general services.

(ii) Subject to such agreements with third parties as may then exist, the facilities development corporation is hereby authorized and empowered to enter into leases, subleases, loans and other financing agreements with the agency with respect to any mental hygiene facility described in subparagraph (i) of this paragraph, and the real property or any interest in real property upon which such a facility is or may be located, in accordance with the provisions of subdivision 4 of section 9 of the facilities development corporation act and the provisions of

subdivisions 1 through 5 of this section; and the agency is hereby authorized and empowered to accept any lease or conveyance of any such mental hygiene facility, and the real property or any interest in real property upon which such a facility is or may be located, to acquire, construct, reconstruct, rehabilitate or improve any such facility, and to issue bonds and notes to provide sufficient funds therefor in accordance with the provisions of this section.

7. a. The agency shall have the power to acquire by lease or deed from the facilities development corporation any real property acquired by the corporation pursuant to the provisions of subdivision six of section nine of the facilities development corporation act (i) for the purpose of constructing, reconstructing, rehabilitating or improving thereon one or more community mental health and developmental disabilities facilities or (ii) for the purpose of financing or refinancing the acquisition, construction, reconstruction, rehabilitation or improvement thereon of one or more community mental health and developmental disabilities facilities, pursuant to the provisions of this act and the facilities development corporation act. The agency is hereby authorized to lease or sublease such real property and facilities thereon to the corporation for the purpose of making the same available to a city or a county not wholly within a city, for use and occupancy in accordance with the provisions of a lease, sublease or other agreement between the corporation and such city or county.

b. In the event that the agency shall fail, within five years after the date of a lease or conveyance of such real property from property from such city or county to the corporation, to construct, reconstruct, rehabilitate or improve the community mental health and developmental disabilities facility or facility thereon for which such lease or conveyance was made, as provided for in a lease, sublease or other financing agreement entered into by such city or county and the corporation, then, subject to the terms of any lease, sublease or other financing agreement undertaken by the agency, such real property and any facilities thereon shall revert to the corporation with right of re-entry thereupon, and such lease or deed shall be made subject to such condition of reverter and re-entry. Provided, however, that as a

condition precedent to the exercise of such right of re-entry the corporation shall pay to the agency an amount equal to the sum of the purchase price of such real property, the depreciated cost of any community mental health and developmental disabilities facility or facilities constructed, reconstructed, rehabilitated or improved thereon and all other costs of the agency incident to the acquisition of such lands and the financing of construction, reconstruction, rehabilitation or improvement relating to such community mental health and developmental disabilities facility or facilities, all as provided in the aforesaid lease, sublease or other financing agreement entered into with the corporation. It is further provided that for the Corona unit of the Bernard M. Fineson developmental disabilities services office, the corporation may but is not required to pay to the agency an amount less than or equal to the purchase price of the real property, the depreciated cost of the sum of the community mental health and developmental disabilities facility constructed, reconstructed, rehabilitated, demolished or improved thereon and all other costs of the agency incident to the acquisition of such lands and the financing of construction, reconstruction, rehabilitation, demolition or improvement relating to such community mental health and developmental disabilities facility, all as provided in the aforesaid lease, sublease or other financing agreement entered into with the corporation.

c. No real property or interest therein shall be acquired by the agency pursuant to this subdivision unless the title thereto shall be approved by the attorney general.

d. The attorney general shall pass upon the form and sufficiency and manner of execution of any deed of conveyance and of any lease or sublease of real property authorized to be acquired by the agency pursuant to this subdivision and the same shall not be effective unless such deed, lease or sublease shall be so approved by him.

§ 10. Bonds and notes as legal investments. The bonds and notes of the agency are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions,

all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and saving 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 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 and belonging to them.

§ 11. Exemption from taxation of property and income. The property of the agency and its income and operations shall be exempt from taxation.

§ 12. Exemption from taxation of notes and bonds. It is hereby determined that the creation of the agency is in all respects for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this act. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the agency, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the agency, issued pursuant to this act and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

§ 13. Agreement with the state. The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act, that the state will not limit or alter the rights hereby vested in the agency 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 on any

unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

§ 14. State's right 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 agency to redeem, prior to maturity, 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.

§ 15. Remedies of noteholders and bondholders. 1. In the event that the agency shall default in the payment of principal of or interest on any issue of notes or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this act, 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 approved 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 herein provided.

2. 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:

(a) 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 agency to collect fees and charges and interest and amortization payments on mortgage and project loans made by it adequate to carry out any agreement as to, or pledge of, such fees and charges and interest and amortization payments on such mortgages, project loans and other properties and to require the agency to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this act;

(b) bring suit upon such notes or bonds;

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

(d) 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;

(e) 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.

3. 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.

4. 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.

5. Before declaring due and payable the principal of notes or bonds issued in connection with any mortgage or other obligations securing a mortgage loan made by the agency, the trustee shall first give thirty days' notice in writing to the governor, to the agency, to the state commissioner of health and to the attorney general of the state.

§ 16-a. Equal employment opportunity program. 1. All contracts for design, construction, services and materials pursuant to this act of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

b. At the request of the agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the agency to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

c. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the agency, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

d. The contractor will include the provisions of paragraphs a through c of this subdivision in every subcontract or purchase order in such a

manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

2. The agency shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The agency may take appropriate action including contractual sanctions for non-compliance to effectuate the provisions of this section and shall be responsible for monitoring compliance with this act.

§ 16-b. Minority and women-owned business enterprise program. 1. a. In the performance of projects pursuant to this act minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The agency shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this act shall be construed to limit the ability of the agency to assure that qualified minority and women-owned business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least

fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this paragraph shall not be construed to limit the ability of any minority or women-owned business enterprise to bid on any contract.

b. In the implementation of this section, the agency shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this section. If the department or the office determines that by virtue of the imposition of the requirements of any such law, in respect to contracts, the provisions thereof duplicate or conflict with this act, the agency may waive the applicability of this section to the extent of such duplication or conflict.

c. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in programs authorized under this act be applied without regard to local circumstances to all projects or in all communities.

2. In order to implement the requirements and objectives of this section, the agency shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

§ 17. Assistance by state officers, departments, boards and

commissions. 1. The department of audit and control, department of law, department of health, and all other state officers, departments, boards, divisions and commissions may render such services to the agency within their respective functions as may be requested by the agency.

2. The state commissioner of health and the state department of health are hereby designated to act for and in behalf of the agency in servicing the mortgage loans of the agency, and shall perform such functions and services in connection with the making, servicing and collection of such loans as shall be requested by the agency. The agency shall pay to the department of health from any monies of the agency available for such purpose, such amounts as are necessary to reimburse the department of health for the reasonable cost of the services performed by the commissioner of health and department of health pursuant to this section.

§ 18. Annual report. The agency shall submit to the governor, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the comptroller and the director of the budget within one hundred eighty days after the end of its fiscal year, a complete and detailed report setting forth: (1) its operations and accomplishments; (2) its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the agency for its operating and capital outlay purposes, including a listing of all private consultants engaged by the agency on a contract basis and a statement of the total amount paid to each such private consultant; (3) its assets and liabilities at the end of its fiscal year, including a schedule of its mortgage loans and commitments and the status of reserve, special or other funds; and (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

§ 19. Bond reserve insurance fund. The agency shall create and establish a special fund, to be known as the bond reserve insurance fund

and shall pay into such fund all monies appropriated and made available by the state for the purposes of such fund and any other monies which may be made available to the agency for the purposes of such fund from any other source or sources. All monies held in the bond reserve insurance fund shall be used by the agency to meet the agency's obligation to repay principal and interest on its outstanding bonds solely to the extent that all other revenues of the agency available for such purpose are not sufficient to meet such obligations of the agency. Any income or interest earned by, or increment to the bond reserve insurance fund may be used for authorized purposes including, but not limited to, the addition of such income or interest earned, or increment to the monies held in such fund for the purposes herein provided, or the repayment of appropriation expenditures made to the credit of such fund.

§ 20. Actions against agency. Except in an action for wrongful death, an action against the agency founded on tort shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the agency 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 agency 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.

§ 21. Act not affected if in part unconstitutional. If any section, subdivision, paragraph, sentence, clause or provision of this act shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 22. Inconsistent provisions in other laws superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be

controlling.