
By: **Delegates Hammen and Kach**

Introduced and read first time: February 11, 2005

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Nursing Facility Conversion Grant Program**

3 FOR the purpose of establishing the Nursing Facility Conversion Grant Program;
4 authorizing the Board of Public Works, on the recommendation of the Secretary
5 of Health and Mental Hygiene to provide grants under the Program to counties,
6 municipal corporations, and nonprofit organizations for the conversion of
7 nursing facility beds to certain other health care services; requiring the
8 Department of Health and Mental Hygiene to make certain recommendations;
9 authorizing the Board of Public Works to adopt certain regulations; providing
10 certain terms, conditions, and limitations on the allocations, use, and amount of
11 State grants under the Program; providing that no proceeds of a grant may be
12 used for certain religious purposes; providing that, under certain circumstances,
13 the State may recover a certain portion of the State funds expended; providing
14 for certain judicial proceedings and liens to enforce the State's right of recovery
15 and the priority of the proceedings and liens; providing that temporary
16 delicensure of bed capacities of certain facilities do not require certificate of need
17 review under certain circumstances; providing that the Maryland Health Care
18 Commission shall retain certain bed capacities on its inventory under certain
19 circumstances; requiring the Department of Health and Mental Hygiene to
20 adopt certain regulations in consultation with the Maryland Health Care
21 Commission and the nursing home industry; defining certain terms; and
22 generally relating to grants for the conversion of nursing facilities.

23 BY adding to

24 Article - Health - General
25 Sections 24-1301 through 24-1308, inclusive, to be under the new subtitle
26 "Subtitle 13. Nursing Facility Conversion Grant Program"
27 Annotated Code of Maryland
28 (2000 Replacement Volume and 2004 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health - General**

2 SUBTITLE 13. NURSING FACILITY CONVERSION GRANT PROGRAM.

3 24-1301.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "FACILITY" MEANS:

7 (1) (I) A PUBLIC NURSING FACILITY THAT IS WHOLLY OWNED BY AND
8 OPERATED UNDER THE AUTHORITY OF A COUNTY OR A MUNICIPAL CORPORATION,
9 OR BOTH; OR10 (II) A NONPROFIT NURSING FACILITY THAT IS WHOLLY OWNED BY
11 AND OPERATED UNDER THE AUTHORITY OF A NONPROFIT ORGANIZATION;12 (2) A FACILITY THAT MEETS THE DEFINITION OF § 19-1401 OF THIS
13 ARTICLE; AND

14 (3) A FACILITY THAT IS LICENSED BY THE DEPARTMENT.

15 (C) "NONPROFIT ORGANIZATION" MEANS:

16 (1) A BONA FIDE RELIGIOUS ORGANIZATION, NO PART OF THE
17 EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY INDIVIDUAL OR IS USED FOR
18 ANY PURPOSE OTHER THAN THE MAINTENANCE AND OPERATION OF THE FACILITY,
19 THE PURCHASE OF EQUIPMENT TO BE USED IN THE FACILITY, OR THE EXPANSION OF
20 THE FACILITY; OR

21 (2) AN ORGANIZATION:

22 (I) THAT IS CHARTERED AS A NONPROFIT CORPORATION AND
23 CLASSIFIED BY THE INTERNAL REVENUE SERVICE AS NONPROFIT; AND24 (II) NO PART OF THE EARNINGS OF WHICH INURES TO THE
25 BENEFIT OF ANY INDIVIDUAL OR IS USED FOR ANY PURPOSE OTHER THAN THE
26 MAINTENANCE AND OPERATION OF THE FACILITY, THE PURCHASE OF EQUIPMENT
27 TO BE USED IN THE FACILITY, OR THE EXPANSION OF THE FACILITY.

28 (D) "WHOLLY OWNED" INCLUDES LEASED, IF:

29 (1) (I) THE LEASE IS FOR A MINIMUM TERM OF 30 YEARS FOLLOWING
30 PROJECT COMPLETION; OR31 (II) THE LEASE AGREEMENT EXTENDS THE RIGHT OF PURCHASE
32 TO THE LESSEE; AND33 (2) THE LESSOR CONSENTS TO THE RECORDING, IN THE LAND RECORDS
34 OF THE POLITICAL SUBDIVISION IN WHICH THE FACILITY IS LOCATED, OF A NOTICE

1 OF THE STATE'S RIGHT OF RECOVERY, AS PROVIDED UNDER § 24-606 OF THIS
2 SUBTITLE; OR

3 (3) THE LEASE AGREEMENT IS WITH THE STATE FOR A STATE-OWNED
4 BUILDING OR STATE-OWNED PROPERTY.

5 24-1302.

6 THE BOARD OF PUBLIC WORKS, UPON RECOMMENDATION OF THE SECRETARY
7 OF THE DEPARTMENT, MAY MAKE GRANTS TO QUALIFIED APPLICANTS FOR THE
8 PURPOSE OF CONVERTING NURSING FACILITY BEDS TO OTHER HEALTH CARE
9 SERVICES DEEMED APPROPRIATE BY THE DEPARTMENT, INCLUDING THE PLANS,
10 SPECIFICATIONS, SITE IMPROVEMENT, SURVEYS, AND APPLICABLE ARCHITECTS'
11 AND ENGINEERS' FEES.

12 24-1303.

13 (A) ANY COUNTY, MUNICIPAL CORPORATION, OR NONPROFIT ORGANIZATION
14 SPONSORING A PROJECT UNDER THIS SUBTITLE MAY APPLY TO THE DEPARTMENT
15 FOR A STATE GRANT TO BE APPLIED TOWARD THE COST OF THAT PROJECT.

16 (B) THE APPLICATION SHALL BE DIRECTED TO THE SECRETARY OF THE
17 DEPARTMENT.

18 (C) ON APPROVAL OF A PROJECT AND THE PROJECT PLANS BY THE
19 DEPARTMENT, THE SECRETARY SHALL PROMPTLY REPORT THE APPLICATION TO
20 THE BOARD OF PUBLIC WORKS, TOGETHER WITH THE SECRETARY'S
21 RECOMMENDATION THAT THE BOARD OF PUBLIC WORKS MAKE FUNDS AVAILABLE
22 AS PROVIDED IN THIS SUBTITLE.

23 24-1304.

24 (A) THE ALLOCATION AND USE OF STATE FUNDS UNDER THIS SUBTITLE ARE
25 SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

26 (1) STATE FUNDS MAY BE USED ONLY FOR PROJECTS APPROVED BY THE
27 SECRETARY UNDER THIS SUBTITLE.

28 (2) (I) ANY FEDERAL GRANT THAT IS AVAILABLE FOR THIS PURPOSE
29 SHALL BE APPLIED FIRST TO A PROJECT APPROVED UNDER THIS SUBTITLE; OR

30 (II) IN THIS SUBTITLE, COMMUNITY DEVELOPMENT BLOCK
31 GRANTS SHALL BE CONSIDERED AS LOCAL MATCHING FUNDS AND MAY NOT BE
32 CONSIDERED AS FEDERAL GRANT FUNDS.

33 (B) A STATE GRANT SHALL PROVIDE UP TO 50% OF THE ELIGIBLE COST
34 REMAINING AFTER THE FEDERAL GRANT HAS BEEN APPLIED, EXCEPT AS PROVIDED
35 IN SUBSECTION (C) OF THIS SECTION.

1 (C) FOR PROJECTS DESIGNATED UNDER FEDERAL REGULATIONS, STATE
2 PLANS, OR DEPARTMENTAL REGULATIONS AS ELIGIBLE FOR POVERTY AREA
3 FUNDING, A STATE GRANT MAY COVER UP TO 75% OF THE ELIGIBLE COST
4 REMAINING AFTER ANY FEDERAL GRANTS HAVE BEEN APPLIED.

5 (D) THE AMOUNT OF THE STATE GRANT FOR ANY PROJECT SHALL BE
6 DETERMINED AFTER CONSIDERATION OF:

7 (1) ALL ELIGIBLE APPLICATIONS;

8 (2) THE TOTAL AMOUNT OF UNALLOCATED STATE FUNDS AVAILABLE AT
9 THE TIME THE APPLICATION IS RECEIVED; AND

10 (3) THE PRIORITIES OF AREA NEED ESTABLISHED BY THE DEPARTMENT.

11 (E) (1) NO PORTION OF THE PROCEEDS OF A STATE GRANT MAY BE USED:

12 (I) TO FURTHER SECTARIAN RELIGIOUS INSTRUCTION; OR

13 (II) IN CONNECTION WITH THE DESIGN, ACQUISITION, OR
14 CONSTRUCTION OF ANY BUILDINGS USED OR TO BE USED AS A PLACE OF SECTARIAN
15 RELIGIOUS WORSHIP OR INSTRUCTION.

16 (2) UPON THE REQUEST OF THE BOARD OF PUBLIC WORKS, THE
17 APPLICANT SHALL SUBMIT EVIDENCE SATISFACTORY TO THE BOARD OF PUBLIC
18 WORKS THAT NONE OF THE PROCEEDS OF THE GRANT HAVE BEEN OR ARE BEING
19 USED FOR A PURPOSE PROHIBITED BY THIS SUBTITLE.

20 24-1305.

21 (A) THE BOARD OF PUBLIC WORKS SHALL MAKE ALLOCATIONS FROM FUNDS
22 AVAILABLE UNDER THIS SUBTITLE IN ACCORDANCE WITH THIS SUBTITLE.

23 (B) THE BOARD OF PUBLIC WORKS SHALL CERTIFY THE ALLOCATIONS TO THE
24 PROPER STATE OFFICERS, AND THE TREASURER SHALL MAKE PAYMENTS TO THE
25 APPLICANT, WHEN NEEDED, FOR THE CONSTRUCTION, ACQUISITION, RENOVATION,
26 OR EQUIPPING OF A FACILITY.

27 (C) THE BOARD OF PUBLIC WORKS MAY ADOPT REGULATIONS FOR RECEIVING
28 AND CONSIDERING APPLICATIONS AND FOR DISBURSING FUNDS TO APPLICANTS.

29 24-1306.

30 (A) IN ACCORDANCE WITH THIS SECTION, THE STATE SHALL HAVE THE RIGHT
31 TO RECOVER FUNDS DISBURSED UNDER THIS SUBTITLE.

32 (B) IN THE EVENT OF FAILURE TO COMPLETE A PROJECT OR FAILURE TO
33 COMMENCE OPERATION OF A FACILITY, THE STATE MAY RECOVER FROM THE
34 RECIPIENT OF THE FUNDS DISBURSED FOR THE PROJECT OR FACILITY OR FROM THE
35 OWNER OF THE PROPERTY AN AMOUNT EQUAL TO THE AMOUNT OF STATE FUNDS

1 DISBURSED FOR THE PROJECT, TOGETHER WITH ALL COSTS AND REASONABLE
2 ATTORNEYS' FEES INCURRED BY THE STATE IN THE RECOVERY PROCEEDINGS.

3 (C) THE STATE MAY RECOVER FROM EITHER THE TRANSFEROR OR
4 TRANSFEREE OR, IN THE CASE OF A PROPERTY THAT HAS CEASED TO BE A FACILITY,
5 FROM THE OWNER, AN AMOUNT BEARING THE SAME RATIO TO THE THEN CURRENT
6 VALUE OF SO MUCH OF THE PROPERTY AS CONSTITUTED AN APPROVED PROJECT AS
7 THE AMOUNT OF THE STATE PARTICIPATION BORE TO THE TOTAL ELIGIBLE COST OF
8 THE APPROVED PROJECT, TOGETHER WITH ALL COSTS AND REASONABLE
9 ATTORNEYS' FEES INCURRED BY THE STATE IN THE RECOVERY PROCEEDINGS, IF,
10 WITHIN 30 YEARS AFTER COMPLETION OF A PROJECT, A PROPERTY FOR WHICH
11 FUNDS HAVE BEEN PAID UNDER THIS SUBTITLE:

12 (1) IS SOLD OR TRANSFERRED TO ANY PERSON, AGENCY, OR
13 ORGANIZATION THAT WOULD NOT QUALIFY AS AN APPLICANT UNDER THIS
14 SUBTITLE, OR THAT IS NOT APPROVED AS A TRANSFEREE BY THE BOARD OF PUBLIC
15 WORKS; OR

16 (2) CEASES TO BE A FACILITY AS DEFINED IN THIS SUBTITLE.

17 (D) (1) BEFORE THE STATE MAKES ANY FUNDS AVAILABLE FOR AN
18 APPROVED PROJECT, THE DEPARTMENT SHALL CAUSE A NOTICE OF THIS RIGHT OF
19 RECOVERY TO BE RECORDED IN THE LAND RECORDS OF THE COUNTY OR
20 BALTIMORE CITY IN WHICH THE PROPERTY IS LOCATED.

21 (2) THE RECORDING OF THE NOTICE:

22 (I) DOES NOT CREATE A LIEN AGAINST THE PROPERTY; BUT

23 (II) SHALL CONSTITUTE NOTICE TO ANY POTENTIAL TRANSFEREE,
24 POTENTIAL TRANSFEROR, POTENTIAL CREDITOR, OR OTHER INTERESTED PARTY OF
25 THE POSSIBILITY THAT THE STATE MAY OBTAIN A LIEN UNDER THIS SUBTITLE.

26 (E) (1) (I) THE SECRETARY OF THE BOARD OF PUBLIC WORKS MAY
27 AUTHORIZE THE DEPARTMENT TO FILE A CIVIL CLAIM, IN THE CIRCUIT COURT FOR
28 THE COUNTY OR BALTIMORE CITY IN WHICH THE PROPERTY IS LOCATED, AGAINST
29 THE OWNER OF THE PROPERTY AND ANY OTHER INTERESTED PARTIES, INCLUDING
30 ANY TRANSFEROR THAT THE STATE WISHES TO MAKE A PARTY IF:

31 1. A FAILURE TO COMPLETE THE PROJECT OR COMMENCE
32 OPERATIONS OF THE FACILITY AS DESCRIBED IN SUBSECTION (B) OF THIS SECTION
33 HAS OCCURRED;

34 2. AN ALLEGED SALE OR TRANSFER AS DESCRIBED IN
35 SUBSECTION (C) OF THIS SECTION HAS OCCURRED; OR

36 3. A PROPERTY IS ALLEGED TO HAVE CEASED TO BE A
37 FACILITY AS DEFINED IN THIS SUBTITLE;

38 (II) THE CLAIM SHALL BE FILED WITH:

1 1. SWORN AFFIDAVITS STATING FACTS ON WHICH THE
2 ALLEGATIONS OF DEFAULT ARE BASED; AND

3 2. A DETAILED JUSTIFICATION OF THE AMOUNT CLAIMED.

4 (2) IF THE CIRCUIT COURT DETERMINES FROM THE STATE'S INITIAL
5 FILING THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A DEFAULT HAS
6 OCCURRED, PENDING FULL DETERMINATION OF THE STATE'S CLAIM, THE COURT
7 SHALL AUTHORIZE A TEMPORARY LIEN ON THE PROPERTY:

8 (I) IN THE AMOUNT OF THE STATE'S CLAIM PLUS ANY ADDITIONAL
9 AMOUNT ESTIMATED TO BE NECESSARY TO COVER THE COSTS AND REASONABLE
10 ATTORNEYS' FEES INCURRED BY THE STATE; OR

11 (II) IN OTHER AMOUNTS THAT THE COURT DETERMINES TO BE
12 REASONABLE.

13 (3) (I) A TEMPORARY LIEN SHALL TAKE EFFECT:

14 1. ON THE DATE OF THE COURT'S AUTHORIZATION, IF THE
15 SECRETARY OF THE BOARD OF PUBLIC WORKS RECORDS A NOTICE OF TEMPORARY
16 LIEN IN THE LAND RECORDS OF THE COUNTY OR BALTIMORE CITY IN WHICH THE
17 PROPERTY IS LOCATED WITHIN 10 DAYS AFTER THE COURT'S AUTHORIZATION; OR

18 2. ON THE DATE A NOTICE OF TEMPORARY LIEN IS
19 RECORDED.

20 (II) WHILE THE TEMPORARY LIEN IS IN EFFECT, THE OWNER OR
21 ANY PERSON WHO ACQUIRED AN INTEREST IN THE PROPERTY AFTER THE STATE
22 FIRST MADE FUNDS AVAILABLE IN CONNECTION WITH THE PROPERTY MAY NOT
23 WITHOUT THE PRIOR WRITTEN CONSENT OF THE STATE:

24 1. TAKE ANY ACTION THAT WOULD AFFECT THE TITLE TO
25 THE PROPERTY; OR

26 2. INSTITUTE ANY PROCEEDINGS TO ENFORCE A SECURITY
27 INTEREST OR OTHER SIMILAR RIGHTS IN THE PROPERTY.

28 (4) (I) THE OWNER OF THE PROPERTY OR ANY OTHER INTERESTED
29 PARTY MAY OBTAIN RELEASE OF A TEMPORARY LIEN AT ANY TIME BY FILING WITH
30 THE COURT A BOND SECURING THE PAYMENT IN FULL OF THE STATE'S CLAIM AND
31 ANY ADDITIONAL AMOUNT NECESSARY TO COVER THE COSTS AND REASONABLE
32 ATTORNEYS' FEES INCURRED BY THE STATE.

33 (II) THE OWNER OR OTHER INTERESTED PARTY MAY CAUSE THE
34 RELEASE TO BE RECORDED IN THE LAND RECORDS.

35 (F) PROCEEDINGS TO DETERMINE THE STATE'S RIGHT TO RECOVER AND THE
36 AMOUNT OF ITS RECOVERY UNDER THIS SUBTITLE SHALL HAVE PRIORITY OVER
37 OTHER CIVIL PROCEEDINGS IN THE CIRCUIT COURTS.

1 (G) (1) (I) AT THE CONCLUSION OF FULL ADVERSARY PROCEEDINGS ON
2 THE ISSUE OF DEFAULT AND OF ANY DISPUTES OVER THE AMOUNT OF THE STATE'S
3 RECOVERY, THE CIRCUIT COURT SHALL, IF IT FINDS THAT A DEFAULT HAS
4 OCCURRED, ISSUE A FINAL JUDGMENT FOR THE AMOUNT IT FINDS TO BE
5 RECOVERABLE BY THE STATE.

6 (II) ALL PARTIES INVOLVED IN THE DEFAULT, INCLUDING IN
7 EVERY CASE THE OWNER OF THE PROPERTY, SHALL BE HELD JOINTLY AND
8 SEVERALLY LIABLE TO THE STATE FOR THE AMOUNT OF THE JUDGMENT.

9 (2) (I) EXCEPT AS THE STATE MAY OTHERWISE PROVIDE BY A
10 WRITTEN SUBORDINATION AGREEMENT, IF THE AMOUNT OF THE FINAL JUDGMENT
11 REMAINS UNPAID AFTER 30 DAYS FOLLOWING THE COURT'S FINAL ORDER, THE
12 FINAL JUDGMENT SHALL CONSTITUTE A LIEN ON THE PROPERTY, SUPERIOR TO THE
13 LIEN OR OTHER INTEREST OF A MORTGAGEE, PLEDGEE, PURCHASER, OR JUDGMENT
14 CREDITOR WHOSE INTEREST BECAME PERFECTED AGAINST THIRD PERSONS AFTER
15 THE STATE FIRST MADE FUNDS AVAILABLE UNDER THIS SUBTITLE.

16 (II) 1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, A LIEN
17 TAKES EFFECT ON THE DATE A NOTICE OF LIEN IS RECORDED.

18 2. A LIEN TAKES EFFECT ON THE 31ST DAY FOLLOWING THE
19 COURT'S FINAL ORDER IF THE SECRETARY OF THE BOARD OF PUBLIC WORKS
20 RECORDS A NOTICE OF LIEN IN THE LAND RECORDS OF THE COUNTY OR BALTIMORE
21 CITY IN WHICH THE PROPERTY IS LOCATED ON OR BEFORE THE 41ST DAY
22 FOLLOWING THE FINAL ORDER.

23 (III) 1. AT THE TIME THAT A LIEN TAKES EFFECT, ANY
24 TEMPORARY LIEN THEN IN EFFECT SHALL BE AUTOMATICALLY AND FULLY
25 RELEASED.

26 2. THE RECORDED NOTICE OF A LIEN SHALL CONSTITUTE
27 NOTICE OF THE RELEASE OF A TEMPORARY LIEN.

28 (IV) A LIEN IMPOSED UNDER THIS SUBSECTION MAY BE ENFORCED
29 AND FORECLOSED IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED IN THE
30 MARYLAND RULES, EXCEPT THAT NEITHER THE STATE NOR ANY AGENT APPOINTED
31 BY THE STATE TO SELL THE PROPERTY NEED FILE A BOND.

32 (3) (I) THE OWNER OR ANY OTHER INTERESTED PARTY MAY OBTAIN
33 RELEASE OF A LIEN AT ANY TIME BY PAYING TO THE STATE THE FULL AMOUNT OF
34 THE JUDGMENT RENDERED BY THE CIRCUIT COURT, TOGETHER WITH INTEREST
35 FROM THE DATE OF JUDGMENT.

36 (II) ON PAYMENT IN FULL, THE SECRETARY OF THE BOARD OF
37 PUBLIC WORKS SHALL CAUSE A RELEASE TO BE RECORDED IN THE LAND RECORDS.

38 (4) IF THE CIRCUIT COURT FINDS THAT THERE HAS BEEN NO DEFAULT
39 OR IF THE FULL AMOUNT OF THE COURT'S JUDGMENT IS PAID TO THE STATE WITHIN
40 30 DAYS AFTER THE COURT'S FINAL ORDER, A TEMPORARY LIEN THEN IN EFFECT

1 SHALL BE RELEASED IMMEDIATELY AND THE SECRETARY OF THE BOARD OF PUBLIC
2 WORKS SHALL CAUSE THE RELEASE TO BE RECORDED IN THE LAND RECORDS.

3 (H) (1) ALL FUNDS RECOVERED AS A RESULT OF THIS RIGHT OF RECOVERY
4 SHALL BE DEPOSITED IN THE ANNUITY BOND FUND AND APPLIED TO THE DEBT
5 SERVICE REQUIREMENTS OF THE STATE.

6 (2) IF THE BOARD OF PUBLIC WORKS DETERMINES THAT THERE IS
7 GOOD CAUSE FOR RELEASING THE TRANSFEROR, TRANSFEREE, OR OWNER FROM
8 THE OBLIGATION IMPOSED UNDER THIS SUBTITLE, THE BOARD OF PUBLIC WORKS
9 MAY WAIVE THE STATE'S RIGHT OF RECOVERY UNDER THIS SUBTITLE.

10 24-1307.

11 (A) A TEMPORARY DELICENSURE OF LICENSED BED CAPACITY OF A FACILITY
12 UNDER THIS SUBTITLE DOES NOT REQUIRE A CERTIFICATE OF NEED REVIEW.

13 (B) THE MARYLAND HEALTH CARE COMMISSION SHALL RETAIN THE BED
14 CAPACITY OF A FACILITY ON ITS INVENTORY FOR UP TO 3 YEARS, PROVIDED THAT
15 THE OWNER OR LICENSED OPERATOR OF THE FACILITY PROVIDES WRITTEN NOTICE
16 TO THE COMMISSION AT LEAST 30 DAYS BEFORE THE PROPOSED TEMPORARY
17 DELICENSURE.

18 24-1308.

19 THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND HEALTH CARE
20 COMMISSION AND THE NURSING HOME INDUSTRY, SHALL ADOPT REGULATIONS TO
21 IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2005.