Public Hearing Testimony

Industrial Development Agency Changes to Encourage Economic Development

Submitted to the:

ASSEMBLY STANDING COMMITTEE ON LOCAL GOVERNMENTS

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Chair, Sam Hoyt

Presented by:

Thomas H. Reinagel, Executive Director
United Church Home Society, Inc.

Representing:

The New York Association of Homes and Services for the Aging

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Introduction

Good morning. My name is Thomas Reinagel and I am the Executive Director of the United Church Home Society and a member of the New York Association of Homes and Services for the Aging (NYAHSA). I am here to respond to your request for testimony about changes to the Industrial Development Agency (IDA) law for New York state. United Church Home Society is developing the next continuing care retirement community (CCRC) in New York state, Fox Run at Orchard Park, and used the IDA to finance the project.

Our association, NYAHSA, is the only statewide organization representing the entire continuum of not-for-profit, mission-driven and public continuing care, including nursing homes, senior housing, adult care facilities, CCRCs, assisted living and community service providers. NYAHSA's 600+ members—which include all eight CCRCs in the state—serve an estimated 500,000 New Yorkers of all ages annually.

I want to thank Chairman Hoyt and members of the Committee on Local Governments for the opportunity to testify today in support of changes to the law authorizing IDA financing. On NYAHSA's behalf, I commend the Assembly for focusing attention on the important issue of improving the ability of not-for-profit (NFP) agencies serving seniors to use IDA funding for project development financing. IDA financing is crucial to encourage the development of retirement communities providing the highest quality homes and services.

Background on the IDA Law

IDAs are formed under Article 18-A of the New York State General Municipal Law as public benefit corporations. From 1969 to 1984, approximately 176 IDAs were formed by special legislation within local governments. IDAs actively promote, encourage, attract and develop job and recreational opportunities and economically sound commerce and industry in cities, towns, villages and counties throughout New York state. IDAs provide financial assistance through tax incentives to qualified applicants in order to promote the economic welfare, prosperity and recreational opportunities for residents of municipalities.

Chapter 905 of the laws of 1986 allowed IDAs to provide capital financing for most NFP organizations' development projects, but restricted IDAs from providing assistance to several categories of projects including senior housing facilities and CCRCs. There were few options for NFP organizations to obtain capital financing for larger residential facilities for seniors.

While public authorities such as the Medical Care Facilities Finance Agency (MCFFA) and the Housing Finance Agency offered financing for these proposed senior communities, most NFP organizations were unable to qualify for investment grade ratings normally required in conjunction with bond issuances by these agencies. The Public Authorities Control Board (PACB) routinely requires that organizations issuing non-rated bonds obtain costly third-party credit enhancement. Federal Housing Administration (FHA) mortgage insurance—an often-used credit enhancement program in health care—is not available to residential facilities which require residents to pay an initial entrance fee. Furthermore, most start-up residential facilities for seniors have not been able to obtain private credit enhancement to obtain investment grade ratings for their long term debt, either through letters of credit or private bond insurance. Even when credit enhancement could be obtained, it was often cost prohibitive or required equity or guarantees which were not available.

As described above, third-party credit enhancement is often not available for new NFP residential facilities for seniors. When the third party credit enhancement is available, the additional expense, equity and guarantee requirements and the often-associated time delays, frequently resulted in worthy projects being deemed financially impractical. As a result, significant development opportunities were lost due to the inability of NFP organizations to access the tax-exempt bond market or to otherwise obtain affordable financing.

In 1997, the definition of "civic facilities" was expanded in General Municipal Law to enable the use of IDA financing for senior living facilities, including CCRCs. A civic facility project may include "facilities" as defined in Article 28 of the Public Health Law (e.g., nursing homes) and senior residential communities, provided in each case the cost of such projects does not exceed $20 million. Granting access to IDA financing eliminated the need for credit enhancement required by the PACB, allowing NFP sponsors that do not qualify for credit enhancement (letters of credit, FHA mortgage insurance or private bond insurance) to access the cost-effective tax-exempt bond market.

By providing access to the tax-exempt bond market and expanding the financing options that an organization could explore when considering a capital project, this legislative change filled a significant void for NFP long-term care providers. However, this legislative authority has never been made permanent, and in recent years has needed to be renewed each year.

IDA Financing and Economic Development

IDAs benefit communities by offering incentives to attract, retain, and expand business within their jurisdictions. IDAs can buy and sell property and issue debt. IDAs are authorized to grant significant state and local tax exemptions to the businesses they sponsor. IDAs have become an important catalyst to local economic growth.

The development of retirement communities is very important to the future economic development of New York state. The baby boom generation is the most prosperous in history with Americans age 50 and older controlling two-thirds of all household wealth in the nation in 1998, up from 56 percent in 1983.[1] With an anticipated increase in New York's senior population (age 60 and above) of 37 percent (i.e., from 3 million in 2000 to 4.4 million in 2025), there is a strong economic incentive to develop policies and legislation that would encourage seniors to retire in New York.[2]

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[1] AARP, A Report to the Nation on Economic Security, 2001
[2] NYS Office for the Aging, Demographic Projections 1995 – 2025, May 1999

Changes to the IDA law would encourage economic growth on the state and local level. The development of life care and modified CCRCs, fee-for-service CCRCs (which were just authorized on a demonstration basis in 2004), nursing homes and other senior residential options offers job creation and economic growth opportunities for local communities and business owners.

Due to New York having only eight CCRCs, seniors looking for a life care CCRC often move to surrounding states. For example, Pennsylvania has over 140 life care CCRCs due to more reasonable regulations that encourage more affordable CCRC development. Many New Yorkers have moved there for the additional options available in life care retirement communities in that state. Further CCRC and retirement community development would help to stem the out-migration to other states of well-to-do retirees, while retaining their income and assets within New York state.

One of the most important characteristics of IDAs is that they are community-based entities. Businesses, not-for-profit organizations, government officials, and taxpayers can cooperatively plan development in the communities in which they reside. IDAs are part of the community, and they encourage local cooperation and economic expansion.

CCRCs and IDA Financing Authorization

As previously noted, there are just eight CCRCS currently operating in New York (all of which used IDA financing), one additional CCRC currently in construction since authorization was grated in 1989, and five more CCRCs in the planning process. NYAHSA is working with the Legislature and state agencies on changing laws that would help further encourage development of CCRCs, yet without IDA financing these six CCRCs probably will not be developed.

IDA financing needs to be made a permanent option for CCRCs. The development of these projects is a long-term commitment. Typically, a new project can take up to four years from inception to the start of construction. During the four-year pre-construction period, the sponsor will typically spend millions of dollars on land acquisition, zoning, site plan and regulatory approvals, marketing, engineering and design. Arbitrary sunset dates, such as those that have governed IDA financing of CCRCs, can and have threatened ongoing projects and severely impeded planning for new facilities. A permanent extension will remove uncertainty from the process for provider organizations, lenders and municipal officials.

The sunset provision of IDA financing has current and past ramifications for New York CCRCs. In 1999, the development of Jefferson's Ferry, Long Island's first CCRC, suffered through a six-month delay in financing because the legislative authorization for IDA financing lapsed for several months. The delay cost the project hundreds of thousands of dollars since the start of construction did not begin until December, with associated increases in construction cost due to winter conditions. The project also had to fund ongoing operations of a marketing office with six staff during the delay. Unfortunately, residents paid for these associated costs in the form of higher fees.

While CCRCs have the ability to obtain financing through the New York State Dormitory Authority (DA), the successor to the MCFFA, the PACB still requires that organizations have investment-grade credit ratings for DA financing. Start-up CCRCs do not qualify for investment-grade credit ratings due to not having enough equity prior to construction to use as collateral for the investment-grade credit ratings. A minority of CCRCs may obtain third-party credit enhancement for their long term tax-exempt bonds, yet the high cost of this enhancement is passed on through resident fees, making these facilities less affordable. Financing through the IDA allows the CCRC to access the tax-exempt bond market and obtain capital for construction and working capital which is otherwise not available. In this way, IDA financing enables CCRCs to provide continuing care to New York's seniors here in the state.

CCRCs and Economic Benefits

One of the primary reasons IDAs were established was to create economic development and expand jobs within a community. The development of a CCRC using IDA financing typically creates hundreds of construction jobs as well as full-time, part-time and per diem employment for the operation of the CCRC community.

Jobs created in CCRCs include administrative, support and service positions, health care professionals (RNs, LPNs therapists), as well as food service, maintenance and recreation employees. *Appendix A* at the end of the written testimony lists the CCRCs currently in the planning process in New York state, the numbers of jobs expected to be created during development and the number of employees when in operation.

Another important consideration in encouraging CCRC development is that Medicaid is not used by CCRC residents under a life care contract, and no resident has applied for Medicaid under a modified contract. Since a life care CCRC is an insurance product and health care coverage is provided at every level of care, CCRC residents do not use the Medicaid program. By encouraging CCRC development, New York state also reduces unnecessary reliance on the Medicaid program by New York's seniors.

Fox Run at Orchard Park

Chairman Hoyt, in explaining the importance of IDA financing for CCRCs, I would like to use as an example a facility you are well aware of–Fox Run at Orchard Park. Fox Run is New York's newest CCRC, and was financed through the IDA on April 27, 2007 for $77.8 million. The project is a life care CCRC that will consist of 180 independent living units, 51 enriched housing units and 50 skilled nursing beds. Fox Run is sponsored by our parent organization, the United Church Home Society.

Construction of Fox Run at Orchard Park will generate a substantial economic boost for Orchard Park with an estimated 350 construction jobs in an open-shop environment and 118 CCRC employees upon operation. Fox Run will generate over $17 million of revenue to the local taxing jurisdictions over a 30-year payment in lieu of taxes (PILOT) agreement, with over $12 million going to the Orchard Park Central School District.

We were greatly concerned last year when the IDA financing for CCRCs expired. It is possible that without the reauthorization of IDA financing at the end of last year's legislative session, years of planning for this community would have been wasted. Even if we were able to finance through construction loans, the additional cost to the future residents would have been substantial.

Recommendations

On NYAHSA's behalf, I would like to propose the following recommendations to ensure the future development of CCRCs, retirement communities, assisted living and skilled nursing facilities in New York state.

Revise the Authority to Finance CCRCs

CCRCs are currently authorized in Article 18-A, Title I of the General Municipal Law, in the first enumerated subdivision four of §854 under "projects." This authorization sunsets (i.e., expires) in June 2007. Moving CCRCs to the second enumerated subdivision four of §854 of the General Municipal Law, which does not include a sunset provision, would ensure permanent financing for CCRCs. Without IDA financing, the development of CCRCs and the jobs they create will be in jeopardy. We propose that the Legislature amend the General Municipal Law in this way to ensure permanent IDA financing authorization for CCRCs.

CCRC Council Authorization

In order for CCRCs to build in New York state, they must be approved for development and financing (through the IDA) by the Continuing Care Retirement Community Council (CCRC Council). Article 46 of the Public Health law established the 13-member CCRC Council consisting of five state officials and eight public representatives. The CCRC Council has responsibility to approve or reject applicants wishing to obtain a certificate of authority for the establishment and operation of a CCRC; and a certificate of authorization for IDA financing. CCRC Council authorization is required by an amendment made to subdivision 4 of section 854 of the General Municipal Law and by section eight and a subdivision provided by section 5 of Chapter 905 of the Laws of 1986.

The authority for the CCRC Council to provide IDA certificates of authorization also expires on June 30, 2007. Even if CCRCs are granted authorization to finance after the sunset, they will not be able to use the IDA unless the CCRC Council authorization is also extended. We propose that the Legislature eliminate the sunset provision for the CCRC Council to provide certificates of authorization for CCRC IDA financing.

Removing the $20 Million Financing Cap for Civic Facilities

Another major improvement to IDA law would be to eliminate the arbitrary $20 million cap imposed on the use of IDA financing for civic facilities, including low and moderate-income retirement housing communities and nursing homes. There is no such cap on IDA financing for CCRCs.

Developing a new senior facility under the existing cap can be a challenge. Since 1999, the overwhelming majority of not-for-profit organizations have selected local IDAs to finance their capital projects. They have chosen to utilize IDA financing for several reasons:

- In most cases, IDA financing is less expensive than that provided by other public authorities.

- The IDA financing process, which requires public input and review, is still faster than that of alternative financing options.

- Local organizations typically prefer to work with local IDAs because project fees typically get reinvested back into the community for local economic development purposes.

- The PACB continues to require projects financed by the DA to have investment grade credit ratings.

Importantly, IDAs are not restricted by project amount from financing other types of projects outside of civic facilities. For example, an IDA can finance a $200 million college science and technology center, but it cannot finance a $21 million retirement housing community. Senior facility projects that exceed $20 million in development costs entail securing dual financing with the IDA and an additional construction loan at a higher rate. This additional cost to financing, administrative and legal costs eventually gets passed onto residents, make the community affordable to fewer New York seniors. Removing the constraints on IDA financing for senior facilities will allow the development of quality, service-driven communities much needed by New York seniors. We propose that the Legislature eliminate the cap on IDA financing for civic facilities.

If lawmakers ultimately decide to continue placing a project cap on IDA financing of civic facilities, NYAHSA recommends that the cap for civic facilities be raised to $50 million or more. This would accommodate a greater number of senior community and nursing home capital projects based on prevailing construction and development costs.

NYAHSA has provided recommended changes to General Municipal Law in *Appendix B* of this testimony.

Conclusion

IDA financing has permitted the United Church Home Society and other NYAHSA members across the state to expand the settings in which they deliver services, consistent with both the needs of those communities and the statutory mission of the IDAs, as expressed in the General Municipal Law. Nursing homes and less restrictive alternatives to nursing home care such as assisted living, independent housing and CCRCs, are the integral elements for establishing a flexible and affordable system of long term care that will be adequate to meet the demographic needs of the coming years. CCRCs offer all levels of care on one campus, provide an insurance model retirement community, provide economic benefits to local communities and reduce the Medicaid exposure for New York state.

The existing statute has assisted community-based non-profit providers in delivering quality, affordable health care and housing to New Yorkers. The modifications we propose will offer expanded opportunities for providers to deliver those services, and for that reason, NYAHSA strongly supports changes to the law governing IDAs.

Thank you again for the opportunity to testify today. NYAHSA remains available to work with the Legislature and other policymakers to enhance the provision of senior services and promote local economic development through changes to the IDA financing law. In addition, I am available to answer any questions you have on our testimony today.

Appendix A

Employment Projections for Planned CCRCs in New York State

Fox Run at Orchard Park
180 independent living units (ILU) / 51 enriched housing (EH) / 50 nursing home (NH)
Orchard Park, New York
Estimated 350 construction employees; 120 CCRC employees.

The Amsterdam at Harborside
226 ILU / 34 EH / 40 NH
Port Washington, New York
Estimated 550 construction employees; 139 CCRC employees.

Woodland Pond New Paltz
179 ILU / 60 EH / 40 NH
Lake Katrine, New York
Estimated 360 construction employees; 160 CCRC employees.

Harbor Village at Mount Sinai
234 ILU / 43 EH / 60 NH
Mount Sinai, New York
Estimated 385 construction employees; 180 CCRC employees.

Skyline Commons
143 ILU / 19 EH / 40 NH
Jamaica, New York
Estimated 270 construction employees; 130 CCRC employees.

Good Shepherd Village at Endwell (Article 46-A Fee-for Service CCRC)

150 ILU / 32 EH / 32 NH
Endwell, New York
Estimated 340 construction employees; 150 CCRC employees.

Appendix B

Recommended Changes to General Municipal Law

Article 18-A, Title I

AN ACT to amend the general municipal law and the public health law in relation to a continuing care retirement community

Section 1. The second enumerated subdivision 4 of section 854 of the general municipal law is amended as follows:

* (4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility, **a continuing care retirement community** or a railroad facility, provided, however, no agency shall use its funds in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located.

* NB Effective July 1, 2007

Section 2. The second enumerated subdivision 13 of section 854 of the general municipal law is amended as follows:

* (13) "Civic facility" - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

Notwithstanding the limitations contained in the preceding sentence, a civic facility project may include: (a) dormitories for educational institutions; (b) facilities as defined in article twenty-eight of the public health law and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older **~~[provided that the total cost of such projects as provided for in paragraphs (a), and (b), and (c) herein does not exceed twenty million dollars~~].** Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or any other approval as provided by law.

[~~* NB Repealed July 1, 2007~~]
* NB There are 2 sb (13)'s

Section 3. Section 15 of chapter 66 of the laws of 1994, amending the public health law, the general municipal law and the insurance law relating to the financing of life care communities, as amended by chapter 142 of the laws of 2006, is amended to read as follows:

§15. This act shall take effect immediately, provided, however that the amendment made to subdivision 4 of section 854 of the general municipal law by section eight of this act shall not affect the reversion of such subdivision as provided by section 5 of chapter 905 of the laws of 1986 as amended and that where the continuing care retirement community council is authorized to promulgate regulations by this act, it is hereby authorized to implement the provisions of this act in advance of such regulations **[~~; and provided further that sections one, three, seven, eight, nine, ten, eleven, twelve and thirteen of this act, and paragraph m of subdivision 2 of section 4602 of the public health law, as added by section two of this act, shall apply only to applicants for a certificate of authority pursuant to article 46 of the public health law that have been approved to receive and have received such certificate of authority on or before July 1, 2007~~]**.

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