

HOUSE No. 4771

The Commonwealth of Massachusetts

By Mr. Cabral of New Bedford, for the committee on Bonding, Capital Expenditures and State Assets, that the Senate Bill financing health care through moral obligation bonds (Senate, No. 2208) ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4771. June 21, 2010.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Antonio F.D. Cabral	13th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

By striking out all after the enacting clause and inserting in place thereof the following:

1 “SECTION 1. Paragraph (n) of section 5 of chapter 614 of the acts of 1968 is hereby amended by
2 striking out the words “its administrative” and inserting in place thereof the following words: fees,
3 administrative.

4 SECTION 2. Said section 5 of said chapter 614 is hereby further amended by inserting after paragraph (n)
5 the following paragraph:

6 (n1/2) to fund the capital reserves authorized under paragraph (g) of section 10, to fund and administer
7 loans and grant programs for community hospitals and community health centers under paragraph (g) of
8 section 10 and to fund any reimbursement of the commonwealth required by paragraph (g)(xii) of section
9 10;

10 SECTION 3. Section 10 of said chapter 614 is hereby further amended by adding the following
11 paragraph:

12 (g)(i) For the benefit of nonprofit community hospitals and nonprofit community health centers licensed
13 by the department of public health and meeting the definition of a community health center under 114.6
14 CMR 13.00 as either a community health center or a hospital licensed health center, the authority may
15 create and establish special funds to be known as Community Hospital and Community Health Center
16 Capital Reserve Funds and, to the extent so created,

17 shall pay into each such fund any monies appropriated and made available by the

18 commonwealth for the purposes of such fund, any proceeds from the sale of notes or bonds to the extent
19 provided in the resolution, trust agreement or indenture of the authority authorizing issuance thereof, any
20 other monies or funds of the authority that the authority determines to deposit in the fund and any other
21 monies which may be available to the authority only for the purpose of such fund from any other source

22 or sources. All monies held in the fund, except as hereinafter provided, shall be used solely for the
23 payment of the principal of bonds of the

24 authority which are secured by any such fund as the same mature, which herein shall include becoming
25 payable by sinking fund installment, the purchase of such bonds, the payment of interest on such bonds,
26 or the payment of any redemption premium required to be paid when such bonds are redeemed prior to
27 maturity; provided, however, that, monies in a Community Hospital and Community Health Center
28 Capital Reserve Fund shall not be withdrawn therefrom at any time in such amount as would reduce the
29 amount of the fund to less than the maximum

30 amount of principal and interest maturing and becoming due in a succeeding calendar year on outstanding
31 bonds which are secured by the fund, except for the purpose of paying the principal of and interest on
32 such bonds maturing and becoming due or for the retirement of such bonds in accordance with the terms
33 of a contract between the authority and its bondholders and for the payment of which other monies
34 pledged to secure such bonds are not available. Any income or interest earned by, or increment to, a
35 Community Hospital and Community Health Center Capital Reserve Fund due to the investment thereof
36 shall be used by the authority for the purposes of the fund.

37 (ii) The authority shall not issue bonds which are secured by a Community Hospital and Community
38 Health Center Capital Reserve Fund at any time if the maximum amount of principal and interest
39 maturing or becoming due in a succeeding calendar year on such bonds then to be issued and on all other
40 outstanding bonds of the authority which are secured by a fund will exceed the amount of such
41 Community Hospital and Community Health Center Capital Reserve Fund at the time of issuance unless
42 the Authority, at the time of issuance of such bonds, shall deposit in such Fund from the proceeds of the
43 bonds so to be issued, or otherwise, an amount which, together with the amount then in the fund, will be
44 not less than the maximum amount of principal and interest maturing and becoming due in a succeeding
45 calendar year on such bonds then to be issued and on all other outstanding bonds of the authority which
46 are secured by any such fund.

47 (iii) To assure the continued operation and solvency of the authority for the carrying out of the public
48 purposes of this act, provision is made in subparagraph (i) for the accumulation in a Community Hospital
49 and Community Health Center Capital Reserve Fund of an amount equal to the maximum amount of
50 principal and interest maturing and becoming due in a succeeding calendar year on all outstanding bonds
51 which are secured by any such fund. In order to further assure the maintenance of a Community Hospital
52 and Community Health Center Capital Reserve Fund, there shall be appropriated annually and paid to the
53 authority for deposit in the fund such sum, if any, as shall be certified by the executive director of the
54 authority to the governor as necessary to restore the fund to an amount equal to the maximum amount of
55 principal and interest maturing and becoming due in a succeeding calendar year on the outstanding bonds

56 which are secured by any such fund. The executive director of the authority shall annually, on or before
57 December 1, make and deliver to the governor a certificate stating the amount, if any, required to restore a
58 Community Hospital and Community Health Center Capital Reserve Fund to the amount aforesaid and
59 the amount so stated, if any, shall be appropriated and paid to the authority during the then current fiscal
60 year of the commonwealth.

61 (iv) For the purposes of this paragraph, in computing the amount of a Community

62 Hospital and Community Health Center Capital Reserve Fund, securities in which all or a portion of the
63 fund are invested shall be valued at par or, if purchased at less than par, at their cost to the authority
64 unless otherwise provided in the resolution, trust agreement or indenture authorizing the issuance of
65 bonds secured by the fund.

66 (v) For the purposes of this paragraph, the amount of a letter of credit, insurance

67 contract, surety bond or similar financial undertaking available to be drawn upon and applied to
68 obligations to which money in the Community Hospital and Community Health Center Capital Reserve
69 Fund may be applied shall be counted as money in the fund. For the purposes of this paragraph, in
70 calculating the maximum amount of interest due in the future on variable rate bonds or bonds with respect
71 to which the interest rate is not at the time of calculation determinable, the interest rate shall be calculated
72 at the maximum interest rate on such bonds or

73 such lesser interest rate as shall be certified by the authority as an appropriate proxy for such variable or
74 nondeterminable interest rate.

75 (vi) Bonds secured by a Community Hospital and Community Health Center Capital Reserve Fund shall
76 be issued by the authority solely for the benefit of nonprofit community hospitals and nonprofit
77 community health centers licensed by the department of public health.

78 (vii) Notwithstanding any provision of this act to the contrary, no loan shall be made by the authority to a
79 nonprofit community hospital or nonprofit community health center from the proceeds of bonds secured
80 by a Community Hospital and Community Health Center Capital Reserve Fund established under this
81 paragraph unless: (a) the project to be financed by the loan has been approved by the secretary of health
82 and human services; and (b) the loan and the issuance and terms of the related bonds have been approved
83 by the secretary of administration and finance. In connection with any loan to a nonprofit community
84 hospital or nonprofit community health center pursuant to this paragraph, the secretary of health and
85 human services and the secretary of administration and finance may enter into an agreement with the
86 authority and the nonprofit community hospital or nonprofit community health center to: (a) require that
87 the nonprofit community hospital or nonprofit community health center provide financial statements or

88 other information relevant to the financial condition of the nonprofit community hospital or nonprofit
89 community health center and its compliance with the terms of the loan; (b) require that the nonprofit
90 community hospital or nonprofit community health center reimburse the commonwealth for any amounts
91 the commonwealth transfers to the fund under subparagraph (iii) to replenish the fund as a result of a loan
92 payment default by the nonprofit community hospital or nonprofit community health center; and (c)
93 require compliance by the nonprofit community hospital or nonprofit community health center or the
94 authority with any other terms and conditions that the secretary of health and human services and the
95 secretary of

96 administration and finance considers appropriate in connection with the loan.

97 (viii) When the authority notifies the secretary of administration and finance in writing that an institution
98 eligible to use the authority under this paragraph is in default as to the payment of principal or interest on
99 any bonds issued by the authority on behalf of that institution or that the authority has reasonable grounds
100 to believe that the institution will not be able to make a full payment when that payment is due, the
101 secretary of administration and finance shall direct the comptroller to withhold any funds in the
102 comptroller's custody that are due or payable to the institution until the amount of the principal or interest
103 due or anticipated to be due has been paid to the authority or the trustee for the bondholders, or until the
104 authority notifies the secretary of administration and finance that satisfactory arrangements have been
105 made for the payment of the principal and interest. Funds subject to withholding under this subparagraph
106 shall include, but not be limited to, federal and state grants, contracts, allocations and appropriations.

107 (ix) If the authority further notifies the secretary of administration and finance in
108 writing that no other arrangements are satisfactory, the secretary shall direct the comptroller to make
109 available to the authority without further appropriation any funds withheld from the institution under
110 subparagraph (viii). The authority shall apply the funds to the costs incurred by the institution, including
111 payments required to be made to the authority or trustee for any bondholders of debt service on any bonds
112 issued by the authority for the institution or payments to replenish the Community Hospital and
113 Community Health Center Capital Reserve Fund or

114 required by the terms of any other law or contract to be paid to the holders or owners of bonds issued on
115 behalf of the institution upon failure or default, or upon reasonable expectation of failure or default, of the
116 institution to pay the principal or interest on its bonds when due.

117 (x) Concurrent with any notice from the authority to the secretary of administration and finance under this
118 paragraph, the authority may notify any other agency, department or authority of state government that
119 exercises regulatory, supervisory or statutory control over the operations of the institution. Upon
120 notification, the agency, department or authority shall immediately undertake reviews to determine what

121 action, if any, that agency, department or authority should undertake to assist in the payment by the
122 institution of the money due or the steps that the agencies of the commonwealth, other than the
123 comptroller or the authority, should take to assure the continued prudent operation of the institution or
124 provision of services to the people served by the institution.

125 (xi) Notwithstanding any general or special law to the contrary, in the event that a

126 nonprofit community hospital or nonprofit community health center fails to reimburse the commonwealth
127 for any transfers made by the commonwealth to the authority to replenish the Community Hospital and
128 Community Health Center Capital Reserve Fund in accordance with subparagraph (iii) within 6 months
129 after any such transfer and as otherwise provided in accordance with the terms of the agreement among
130 the nonprofit community hospital or nonprofit community health center, the authority and the
131 commonwealth authorized under subparagraph (vii), the secretary of administration and finance may, in
132 his sole discretion, direct

133 the comptroller to withhold any funds in the comptroller's custody that are due or payable to the nonprofit
134 community hospital or nonprofit community health center to cover all or a portion of the amount the
135 nonprofit community hospital or nonprofit community health center has failed to pay to the
136 commonwealth to reimburse the commonwealth for any such transfers. All contracts issued by the group
137 insurance commission, the commonwealth health insurance connector authority and MassHealth to a third
138 party for the purposes of providing health care insurance paid for by the commonwealth shall provide
139 that, at the direction of the secretary of administration and finance, the third party shall withhold
140 payments to a nonprofit community hospital or nonprofit community health center which fails to
141 reimburse the commonwealth in accordance with the agreement authorized under subparagraph (vii) and
142 shall transfer the withheld amount to the commonwealth. Any such withheld amounts shall be considered
143 to have been paid to the nonprofit community hospital or nonprofit community health center for all

144 other purposes of law and the nonprofit community hospital or nonprofit community health center shall
145 be considered to have reimbursed the commonwealth for all or a portion of any such transfers to the
146 Community Hospital and Community Health Center Capital Reserve Fund for purposes of the agreement
147 authorized under said subparagraph (vii).

148 (xii) Notwithstanding any general or special law to the contrary, in the event that the commonwealth has
149 not been fully reimbursed the amount of any transfer made pursuant to this subsection (g) as of the one
150 year anniversary of such transfer, the authority shall pay to the commonwealth an amount equal to that
151 portion of the transfer for which the commonwealth has not yet received reimbursement as of said
152 anniversary. Said reimbursement shall be completed pursuant to a schedule determined by the secretary
153 of administration and finance. Said reimbursement shall not interfere with the obligations of a nonprofit
154 community hospital or nonprofit community health center pursuant to subsection (g)(xi). Any funds

155 received by the commonwealth pursuant to subsection (g)(xi) which exceed the full reimbursement to the
156 commonwealth from the authority required by this subsection (g)(xii), shall be paid to the authority.

157 (xiii) For the purposes of this paragraph, a community hospital or community health center shall not
158 include a hospital where the ratio of the number of physician residents in training to the number of
159 inpatient beds exceeds 0.25.

160 (xiv) Projects funded pursuant to this paragraph (g) of section 10 shall comply with the provisions of
161 sections 26 through 27F of chapter 149.

162 SECTION 4. Section 12 of said chapter 614 is hereby amended by striking out the last sentence and
163 inserting in place thereof the following sentence: Except

164 as otherwise provided in paragraph (g) of section 10, the issuance of revenue bonds under this act shall
165 not directly, indirectly or contingently obligate the commonwealth or any political subdivision thereof to
166 levy or to pledge any form of taxation therefore or to make any appropriation for payment of those
167 bonds.”