

SENATE No. 2207

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act financing health care through moral obligation bonds.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Health and Educational Facilities Authority Act, as enacted by Chapter
2 614 of the Massachusetts Acts of 1968, as previously amended, is hereby further amended by
3 inserting the following after sections 2-10(f) thereof:

4 (g) Community Hospital and Community Health Center Capital Reserve Fund.

5 (i) For the benefit of nonprofit community hospitals and nonprofit community health
6 centers within the commonwealth licensed by the department of public health, the Authority may
7 create and establish one or more special funds, herein individually referred to as a Community
8 Hospital and Community Health Center Capital Reserve Fund, and to the extent so created, shall
9 pay into each such Community Hospital and Community Health Center Capital Reserve Fund
10 any monies appropriated and made available by the commonwealth for the purposes of such
11 fund, any proceeds of sale of notes or bonds to the extent provided in the resolution, trust
12 agreement, or indenture of the Authority authorizing issuance thereof, any other monies or funds
13 of the Authority that the Authority determines to deposit in the fund and any other monies which
14 may be available to the Authority only for the purpose of such fund from any other source or

15 sources. All monies held in the Community Hospital and Community Health Center Capital
16 Reserve Fund, except as hereinafter provided, shall be used solely for the payment of the
17 principal of bonds of the Authority which are secured by such Community Hospital and
18 Community Health Center Capital Reserve Fund as the same mature (which herein shall include
19 becoming payable by sinking fund installment), the purchase of such bonds, the payment of
20 interest on such bonds, or the payment of any redemption premium required to be paid when
21 such bonds are redeemed prior to maturity; provided, however, that, monies in a Community
22 Hospital and Community Health Center Capital Reserve Fund shall not be withdrawn therefrom
23 at any time in such amount as would reduce the amount of such Fund to less than the maximum
24 amount of principal and interest maturing and becoming due in any succeeding calendar year on
25 outstanding bonds which are secured by such Community Hospital and Community Health
26 Center Capital Reserve Fund, except for the purpose of paying the principal of and interest on
27 such bonds maturing and becoming due or for the retirement of such bonds in accordance with
28 the terms of any contract between the Authority and its bondholders and for the payment of
29 which other monies pledged to secure such bonds are not available. Any income or interest
30 earned by, or increment to, a Community Hospital and Community Health Center Capital
31 Reserve Fund due to the investment thereof shall be used by the Authority for the purposes of
32 such Community Hospital and Community Health Center Capital Reserve Fund.

33 (ii) The Authority shall not issue bonds which are secured by a Community Hospital
34 and Community Health Center Capital Reserve Fund at any time if the maximum amount of
35 principal and interest maturing or becoming due in a succeeding calendar year on such bonds
36 then to be issued and on all other outstanding bonds of the Authority which are secured by such
37 Community Hospital and Community Health Center Capital Reserve Fund will exceed the

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

45 (iii) To assure the continued operation and solvency of the Authority for the carrying
46 out of the public purposes of this act, provision is made in paragraph (i) for the accumulation in a
47 Community Hospital and Community Health Center Capital Reserve Fund of an amount equal to
48 the maximum amount of principal and interest maturing and becoming due in any succeeding
49 calendar year on all outstanding bonds which are secured by such Community Hospital and
50 Community Health Center Capital Reserve Fund. In order further to assure such maintenance of
51 a Community Hospital and Community Health Center Capital Reserve Fund there shall be
52 annually appropriated and paid to the Authority for deposit in such Community Hospital and
53 Community Health Center Capital Reserve Fund such sum, if any, as shall be certified by the
54 executive director of the Authority to the governor as necessary to restore such Community
55 Hospital and Community Health Center Capital Reserve Fund to an amount equal to the
56 maximum amount of principal and interest maturing and becoming due in any succeeding
57 calendar year on the outstanding bonds which are secured by such Community Hospital and
58 Community Health Center Capital Reserve Fund. The executive director of the Authority shall
59 annually, on or before December first, make and deliver to the governor his certificate stating the
60 amount, if any, required to restore a Community Hospital and Community Health Center Capital

61 Reserve Fund to the amount aforesaid and the amount so stated, if any, shall be appropriated and
62 paid to the Authority during the then current fiscal year of the commonwealth.

63 (iv) For the purposes of this subsection (g), in computing the amount of a Community
64 Hospital and Community Health Center Capital Reserve Fund, securities in which all or a
65 portion of such Fund are invested shall be valued at par, or if purchased at less than par, at their
66 cost to the Authority, unless otherwise provided in the resolution, trust agreement or indenture
67 authorizing the issuance of bonds secured by the Fund.

68 (v) For the purposes of this subsection (g), the amount of any letter of credit,
69 insurance contract, surety bond, or similar financial undertaking available to be drawn upon and
70 applied to obligations to which money in the Community Hospital and Community Health
71 Center Capital Reserve Fund may be applied is deemed to be and shall be counted as money in
72 said Fund. For the purposes of this subsection (g), in calculating the maximum amount of
73 interest due in the future on variable rate bonds or bonds with respect to which the interest rate is
74 not at the time of calculation determinable, the interest rate shall be calculated at the maximum
75 interest rate on such bonds or such lesser interest rate as shall be certified by the Authority as an
76 appropriate proxy for such variable or nondeterminable interest rate.”

77 (vi) Bonds secured by the Community Hospital and Community Health Center
78 Capital Reserve Fund shall be issued by the Authority solely for the benefit of nonprofit
79 community hospitals and nonprofit community health centers within the commonwealth licensed
80 by the department of public health.

81 (vii) Notwithstanding any provision of this act to the contrary, no loan shall be made to a
82 nonprofit community hospital or nonprofit community health center by the authority from

83 proceeds of bonds secured by a community hospital and community health center capital reserve
84 fund established under this paragraph unless: (a) the project to be financed by the loan has been
85 approved by the secretary of health and human services; and (b) the loan and the issuance and
86 terms of the related bonds have been approved by the secretary of administration and finance. In
87 connection with any loan to a nonprofit community hospital or nonprofit community health
88 center pursuant to this paragraph, the secretary of health and human services and the secretary of
89 administration and finance may enter into an agreement with the authority and the nonprofit
90 community hospital or nonprofit community health center to (a) require that the nonprofit
91 community hospital or nonprofit community health center provide financial statements or other
92 information relevant to the financial condition of the nonprofit community hospital or nonprofit
93 community health center and its compliance with the terms of the loan, (b) require that the
94 nonprofit community hospital or nonprofit community health center reimburse the
95 commonwealth for any amounts the commonwealth transfers to the Community Hospital and
96 Community Health Center Capital Reserve Fund under subparagraph (iii) to replenish the fund
97 as a result of a loan payment default by the nonprofit community hospital or nonprofit
98 community health center, and (c) require compliance by the nonprofit community hospital or
99 nonprofit community health center or the authority with any other terms and conditions the
100 secretaries may consider appropriate in connection with the loan.

101 (viii) When the authority notifies the secretary of administration and finance in writing
102 that an institution eligible to use the authority under this paragraph is in default as to the payment
103 of principal or interest on any bonds issued by the authority on behalf of such institution, or that
104 the authority has reasonable grounds to predict that the institution will not be able to make a full
105 payment when that payment is due, the secretary of administration and finance shall direct the

106 comptroller to withhold any funds in the comptroller's custody that are due or payable to the
107 institution until the amount of the principal or interest due or anticipated to be due has been paid
108 to the authority or the trustee for the bondholders, or the authority notifies the secretary of
109 administration and finance that satisfactory arrangements have been made for the payment of the
110 principal and interest. Funds subject to withholding under this subparagraph include, but are not
111 limited to, federal and state grants, contracts, allocations or appropriations.

112 (ix) If the authority further notifies the secretary of administration and finance in writing
113 that no other arrangements are satisfactory, the secretary shall direct the comptroller to make
114 available to the authority without further appropriation any funds withheld from the institution
115 under subparagraph (viii). The authority shall apply the funds to the costs incurred by the
116 institution, including payments required to be made to the authority or trustee for any
117 bondholders of debt service on any bonds issued by the authority for the institution or required
118 by the terms of any other law or contract to be paid to the holders or owners of bonds issued on
119 behalf of the institution upon failure or default, or reasonable expectation of failure or default, of
120 the institution to pay the principal or interest on its bonds when due.

121 (x) Concurrent with any notice from the authority to the secretary of administration and
122 finance under this paragraph (g), the authority may notify any other agency, department or
123 authority of state government that exercises regulatory, supervisory or statutory control over the
124 operations of the institution. Upon notification, the agency, department or authority shall
125 immediately undertake reviews to determine what action, if any, that agency, department or
126 authority should undertake to assist in the payment by the institution of the money due or steps
127 that the agencies of the state other than the comptroller or the authority should take to assure the

128 continued prudent operation of the institution or provision of services to the people served by the
129 institution.

130 (xi) Notwithstanding any general or special law to the contrary, in the event that a
131 nonprofit community hospital or nonprofit community health center fails to reimburse the
132 commonwealth for any transfers made by the commonwealth to the authority to replenish the
133 Community Hospital and Community Health Center Capital Reserve Fund in accordance with
134 subparagraph (iii) within 6 months of any such transfer and as otherwise provided in accordance
135 with the terms of the agreement among the nonprofit community hospital or nonprofit
136 community health center, the authority and the commonwealth authorized under subparagraph
137 (vii), the secretary of administration and finance may, in her sole discretion, direct the
138 comptroller to withhold any funds in the comptroller's custody that are due or payable to the
139 nonprofit community hospital or nonprofit community health center has failed to pay to the
140 commonwealth to reimburse the commonwealth for any such transfers. All contracts issued by
141 the group insurance commission, the health insurance connector authority and MassHealth to any
142 third party for the purposes of providing health care insurance paid for by the commonwealth
143 shall provide that, at the direction of the secretary of administration and finance, the third party
144 shall withhold payments to a nonprofit community hospital or nonprofit community health center
145 which fails to reimburse the commonwealth in accordance with the agreement authorized under
146 subparagraph (vii) and shall transfer the withheld amount to the commonwealth. Any such
147 withheld amounts shall be considered to have been paid to the nonprofit community hospital or
148 nonprofit community health center for all other purposes of law, and the nonprofit community
149 hospital or nonprofit community health center shall be considered to have reimbursed the
150 commonwealth for all or a portion of any such transfers to the Community Hospital and

151 Community Health Center Capital Reserve Fund for purposes of the agreement authorized under
152 subparagraph (vii).

153 (xii) For purposes of this paragraph a community hospital excludes any hospital where
154 the ratio of the number of physician residents-in-training to the number of inpatient beds exceeds
155 0.25.

156 SECTION 2. The Health and Educational Facilities Authority Act, as enacted by Chapter
157 614 of the Massachusetts Acts of 1968, as heretofore amended, is hereby further amended by
158 deleting the last sentence of Section 2-12 thereof and inserting in its place the following: "Except
159 as otherwise permitted pursuant to Section 2-10(g) of this act, the issuance of revenue bonds
160 under the provision of this act shall not directly or indirectly or contingently obligate the
161 commonwealth or any political subdivision thereof to levy or to pledge any form of taxation
162 whatever therefore or to make any appropriation of their payment."