

SENATE No. 2208

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

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

6 (n1/2) to fund the capital reserves authorized under paragraph (g) of section 10 and to
7 fund and administer loans and grant programs for community hospitals and community health
8 centers;

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

11 (g) (i) For the benefit of nonprofit community hospitals and nonprofit community health
12 centers licensed by the department of public health and meeting the definition of a community
13 health center under 114.6 CMR 13.00 as either a community health center or a hospital licensed

14 health center, the authority may create and establish special funds to be known as Community
15 Hospital and Community Health Center Capital Reserve Funds and, to the extent so created,
16 shall pay into each such fund any monies appropriated and made available by the commonwealth
17 for the purposes of such fund, any proceeds from the sale of notes or bonds to the extent
18 provided in the resolution, trust agreement or indenture of the authority authorizing issuance
19 thereof, any other monies or funds of the authority that the authority determines to deposit in the
20 fund and any other monies which may be available to the authority only for the purpose of such
21 fund from any other source or sources. All monies held in the fund, except as hereinafter
22 provided, shall be used solely for the payment of the principal of bonds of the authority which
23 are secured by any such fund as the same mature, which herein shall include becoming payable
24 by sinking fund installment, the purchase of such bonds, the payment of interest on such bonds,
25 or the payment of any redemption premium required to be paid when such bonds are redeemed
26 prior to maturity; provided, however, that, monies in a Community Hospital and Community
27 Health Center Capital Reserve Fund shall not be withdrawn therefrom at any time in such
28 amount as would reduce the amount of the fund to less than the maximum amount of principal
29 and interest maturing and becoming due in a succeeding calendar year on outstanding bonds
30 which are secured by the fund, except for the purpose of paying the principal of and interest on
31 such bonds maturing and becoming due or for the retirement of such bonds in accordance with
32 the terms of a contract between the authority and its bondholders and for the payment of which
33 other monies pledged to secure such bonds are not available. Any income or interest earned by,
34 or increment to, a Community Hospital and Community Health Center Capital Reserve Fund due
35 to the investment thereof shall be used by the authority for the purposes of the fund.

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

47 (iii) To assure the continued operation and solvency of the authority for the carrying out
48 of the public purposes of this act, provision is made in subparagraph (i) for the accumulation in a
49 Community Hospital and Community Health Center Capital Reserve Fund of an amount equal to
50 the maximum amount of principal and interest maturing and becoming due in a succeeding
51 calendar year on all outstanding bonds which are secured by any such fund. In order to further
52 assure the maintenance of a Community Hospital and Community Health Center Capital Reserve
53 Fund, there shall be appropriated annually and paid to the authority for deposit in the fund such
54 sum, if any, as shall be certified by the executive director of the authority to the governor as
55 necessary to restore the fund to an amount equal to the maximum amount of principal and
56 interest maturing and becoming due in a succeeding calendar year on the outstanding bonds
57 which are secured by any such fund. The executive director of the authority shall annually, on or
58 before December 1, make and deliver to the governor a certificate stating the amount, if any,

59 required to restore a Community Hospital and Community Health Center Capital Reserve Fund
60 to the amount aforesaid and the amount so stated, if any, shall be appropriated and paid to the
61 authority during the then current fiscal year of the commonwealth.

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

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

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

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

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

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

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

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

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

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

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

150 shall be considered to have reimbursed the commonwealth for all or a portion of any such
151 transfers to the Community Hospital and Community Health Center Capital Reserve Fund for
152 purposes of the agreement authorized under said subparagraph (vii).

153 (xii) For the purposes of this paragraph, a community hospital or community health
154 center shall not include a hospital where the ratio of the number of physician residents-in-
155 training to the number of inpatient beds exceeds 0.25.

156 SECTION 4. Section 12 of said chapter 614 is hereby amended by striking out the last
157 sentence and inserting in place thereof the following sentence:- Except as otherwise provided in
158 paragraph (g) of section 10, the issuance of revenue bonds under this act shall not directly,
159 indirectly or contingently obligate the commonwealth or any political subdivision thereof to levy
160 or to pledge any form of taxation therefor or to make any appropriation for payment of those
161 bonds.