

SENATE No. 2454

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act Text of amendment (1) offered by Messrs. Richard T. Moore and Tarr to the pending Senate Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

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

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

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

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

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

(g) (i) For the benefit of nonprofit community hospitals and nonprofit community health centers licensed by the department of public health and meeting the definition of a community health center under 114.6 CMR 13.00 as either a community health center or a hospital licensed health center, the authority may create and establish special funds to be known as Community Hospital and Community Health Center Capital Reserve Funds and, to the extent so created, shall pay into each such fund any monies appropriated and made available by the commonwealth for the purposes of such fund, any proceeds from the sale of notes or bonds to the extent provided in the resolution, trust agreement or indenture of the authority authorizing issuance thereof, any other monies or funds of the authority that the authority determines to deposit in the fund and any other monies which may be available to the authority only for the purpose of such fund from any other source or sources. All monies held in the fund, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the authority which are secured by any such fund as the same mature, which herein shall include becoming payable by sinking fund installment, the purchase of such bonds, the payment of interest on such bonds, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that, monies in a Community Hospital and Community Health Center Capital Reserve Fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of the fund to less than the maximum amount of principal

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

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

(iii) To assure the continued operation and solvency of the authority for the carrying out of the public purposes of this act, provision is made in subparagraph (i) for the accumulation in a Community Hospital and Community Health Center Capital Reserve Fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on all outstanding bonds which are secured by any such fund. In order to further

56 assure the maintenance of a Community Hospital and Community Health Center Capital Reserve
57 Fund, there shall be appropriated annually and paid to the authority for deposit in the fund such
58 sum, if any, as shall be certified by the executive director of the authority to the governor as
59 necessary to restore the fund to an amount equal to the maximum amount of principal and
60 interest maturing and becoming due in a succeeding calendar year on the outstanding bonds
61 which are secured by any such fund. The executive director of the authority shall annually, on or
62 before December 1, make and deliver to the governor a certificate stating the amount, if any,
63 required to restore a Community Hospital and Community Health Center Capital Reserve Fund
64 to the amount aforesaid and the amount so stated, if any, shall be appropriated and paid to the
65 authority during the then current fiscal year of the commonwealth.

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

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

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

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

(vii) Notwithstanding any provision of this act to the contrary, no loan shall be made by the authority to a nonprofit community hospital or nonprofit community health center from the proceeds of bonds secured by a Community Hospital and Community Health Center Capital Reserve Fund established under this paragraph unless: (a) the project to be financed by the loan has been approved by the secretary of health and human services; and (b) the loan and the issuance and terms of the related bonds have been approved by the secretary of administration and finance. In connection with any loan to a nonprofit community hospital or nonprofit community health center pursuant to this paragraph, the secretary of health and human services and the secretary of administration and finance may enter into an agreement with the authority and the nonprofit community hospital or nonprofit community health center to: (a) require that the nonprofit community hospital or nonprofit community health center provide financial statements or other information relevant to the financial condition of the nonprofit community hospital or nonprofit community health center and its compliance with the terms of the loan; (b) require that the nonprofit community hospital or nonprofit community health center reimburse the commonwealth for any amounts the commonwealth transfers to the fund under subparagraph (iii) to replenish the fund as a result of a loan payment default by the nonprofit community hospital or nonprofit community health center; and (c) require compliance by the nonprofit community hospital or nonprofit community health center or the authority with any other terms

and conditions that the secretary of health and human services and the secretary of administration and finance considers appropriate in connection with the loan.

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

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

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

(xi) Notwithstanding any general or special law to the contrary, in the event that a nonprofit community hospital or nonprofit community health center fails to reimburse the commonwealth for any transfers made by the commonwealth to the authority to replenish the Community Hospital and Community Health Center Capital Reserve Fund in accordance with subparagraph (iii) within 6 months after any such transfer and as otherwise provided in accordance with the terms of the agreement among the nonprofit community hospital or nonprofit community health center, the authority and the commonwealth authorized under subparagraph (vii), the secretary of administration and finance may, in his sole discretion, direct the comptroller to withhold any funds in the comptroller's custody that are due or payable to the nonprofit community hospital or nonprofit community health center to cover all or a portion of the amount the nonprofit community hospital or nonprofit community health center has failed to pay to the commonwealth to reimburse the commonwealth for any such transfers. All contracts issued by the group insurance commission, the commonwealth health insurance connector authority and MassHealth to a third party for the purposes of providing health care insurance

147 paid for by the commonwealth shall provide that, at the direction of the secretary of
148 administration and finance, the third party shall withhold payments to a nonprofit community
149 hospital or nonprofit community health center which fails to reimburse the commonwealth in
150 accordance with the agreement authorized under subparagraph (vii) and shall transfer the
151 withheld amount to the commonwealth. Any such withheld amounts shall be considered to have
152 been paid to the nonprofit community hospital or nonprofit community health center for all other
153 purposes of law and the nonprofit community hospital or nonprofit community health center
154 shall be considered to have reimbursed the commonwealth for all or a portion of any such
155 transfers to the Community Hospital and Community Health Center Capital Reserve Fund for
156 purposes of the agreement authorized under said subparagraph (vii).

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

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