

**SENATE . . . . . No. 579**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act To Create a Community Hospital Reserve Fund..

*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. Section 2-10 of chapter 614 of the acts of 1968, as previously amended, is  
2 hereby further amended by inserting after subsection (f) the following new subsection:

3 (g) Community hospital capital reserve fund.

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

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19 community hospital capital reserve fund shall not be withdrawn there from at any time in such  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

29 (ii) The authority shall not issue bonds which are secured by a community hospital capital  
30 reserve fund at any time if the maximum amount of principal and interest maturing or  
31 becoming due in a succeeding calendar year on such bonds then to be issued and on all other  
32 outstanding bonds of the authority which are secured by such community hospital capital reserve  
33 fund will exceed the amount of such community hospital capital reserve fund at the time of  
34 issuance unless the authority, at the time of issuance of such bonds, shall deposit in such fund  
35 from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the

36 amount then in such fund, will be not less than the maximum amount of principal and interest  
37 maturing and becoming due in any succeeding calendar year on such bonds then to be issued and  
38 on all other outstanding bonds of the authority which are secured by such community hospital  
39 capital reserve fund.

40 (iii) To assure the continued operation and solvency of the authority for the carrying out  
41 of the public purposes of this act, provision is made in paragraph (i) for the accumulation in a  
42 community hospital capital reserve fund of an amount equal to the maximum amount of principal  
43 and interest maturing and becoming due in any succeeding calendar year on all outstanding  
44 bonds which are secured by such community hospital capital reserve fund. In order further to  
45 assure such maintenance of a community hospital capital reserve fund there shall be annually  
46 appropriated and paid to the authority for deposit in such community hospital capital reserve  
47 fund such sum, if any, as shall be certified by the executive director of the authority to the  
48 governor as necessary to restore such community hospital capital reserve fund to an amount  
49 equal to the maximum amount of principal and interest maturing and becoming due in any  
50 succeeding calendar year on the outstanding bonds which are secured by such community  
51 hospital capital reserve fund. The executive director of the authority shall annually, on or before  
52 December 1, make and deliver to the governor his certificate stating the amount, if any, required  
53 to restore a community hospital capital reserve fund to the amount aforesaid and the amount so  
54 stated, if any, shall be appropriated and paid to the authority during the then current fiscal year of  
55 the commonwealth.

56 (iv) For the purposes of this subsection in computing the amount of a community hospital

57 capital reserve fund, securities in which all or a portion of such fund are invested shall be  
58 valued at par, or if purchased at less than par, at their cost to the authority, unless otherwise  
59 provided in the resolution, trust agreement or indenture authorizing the issuance of bonds  
60 secured by the fund.

61 (v) For the purposes of this subsection, the amount of any letter of credit, insurance  
62 contract, surety bond, or similar financial undertaking available to be drawn upon and applied to  
63 obligations to which money in the community hospital capital reserve fund may be applied is  
64 deemed to be and shall be counted as money in said fund. For the purposes of this subsection, in  
65 calculating the maximum amount of interest due in the future on variable rate bonds or bonds  
66 with respect to which the interest rate is not at the time of calculation determinable, the interest  
67 rate shall be calculated at the maximum interest rate on such bonds or such lesser interest rate as  
68 shall be certified by the authority as an appropriate proxy for such variable or nondeterminable  
69 interest rate.”

70 (vi) Bonds secured by the community hospital capital reserve fund shall be issued by the  
71 authority solely for the benefit of nonprofit community hospitals within the commonwealth  
72 licensed by the department of public health.

73 (vii) Notwithstanding any provision of this act to the contrary, no loan shall be made to a  
74 nonprofit community hospital by the authority from proceeds of bonds secured by a community  
75 hospital capital reserve fund established under this paragraph unless: (a) the project to be  
76 financed by the loan has been approved by the secretary of health and human services; and (b)  
77 the loan and the issuance and terms of the related bonds have been approved by the secretary of  
78 administration and finance. In connection with any loan to a nonprofit community hospital

79 pursuant to this paragraph, the secretary of health and human services and the secretary of  
80 administration and finance may enter into an agreement with the authority and the nonprofit  
81 community hospital to (a) require that the nonprofit community hospital provide financial  
82 statements or other information relevant to the financial condition of the nonprofit community  
83 hospital and its compliance with the terms of the loan, (b) require that the nonprofit community  
84 hospital reimburse the commonwealth for any amounts the commonwealth transfers to the  
85 community hospital capital reserve fund under subparagraph (iii) to replenish the fund as a result  
86 of a loan payment default by the nonprofit community hospital, and (c) require compliance by  
87 the nonprofit community hospital or the authority with any other terms and conditions the  
88 secretaries may consider appropriate in connection with the loan.

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

100 (ix) If the authority further notifies the secretary of administration and finance in writing  
101 that no other arrangements are satisfactory, the secretary shall direct the comptroller to make

102 available to the authority without further appropriation any funds withheld from the institution  
103 under subparagraph (viii). The authority shall apply the funds to the costs incurred by the  
104 institution, including payments required to be made to the authority or trustee for any  
105 bondholders of debt service on any bonds issued by the authority for the institution or required  
106 by the terms of any other law or contract to be paid to the holders or owners of bonds issued on  
107 behalf of the institution upon failure or default, or reasonable expectation of failure or default, of  
108 the institution to pay the principal or interest on its bonds when due.

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

118 (xi) Notwithstanding any general or special law to the contrary, in the event that a  
119 nonprofit community hospital fails to reimburse the commonwealth for any transfers made by  
120 the commonwealth to the authority to replenish the community hospital capital reserve fund in  
121 accordance with subparagraph (iii) within 6 months of any such transfer and as otherwise  
122 provided in accordance with the terms of the agreement among the nonprofit community  
123 hospital, the authority and the commonwealth authorized under subparagraph (vii), the secretary  
124 of administration and finance may, in her sole discretion, direct the comptroller to withhold any

125 funds in the comptroller's custody that are due or payable to the nonprofit community hospital  
126 has failed to pay to the commonwealth to reimburse the commonwealth for any such transfers.  
127 All contracts issued by the group insurance commission, the health insurance connector authority  
128 and MassHealth to any third party for the purposes of providing health care insurance paid for by  
129 the commonwealth shall provide that, at the direction of the secretary of administration and  
130 finance, the third party shall withhold payments to a nonprofit community hospital which fails to  
131 reimburse the commonwealth in accordance with the agreement authorized under subparagraph  
132 (vii) and shall transfer the withheld amount to the commonwealth. Any such withheld amounts  
133 shall be considered to have been paid to the nonprofit community hospital for all other purposes  
134 of law, and the nonprofit community hospital shall be considered to have reimbursed the  
135 commonwealth for all or a portion of any such transfers to the community hospital capital  
136 reserve fund for purposes of the agreement authorized under subparagraph (vii).

137 (xii) For purposes of this paragraph a community hospital excludes any hospital where  
138 the ratio of the number of physician residents-in-training to the number of inpatient beds exceeds  
139 0.25.

140 SECTION 2. Section 2-12 of said chapter 614 of the acts of 1968, as amended, is hereby  
141 further amended by striking out the last sentence and inserting in place thereof the following: -

142 "Except as otherwise permitted pursuant to Section 2-10(g) of this act, the issuance of  
143 revenue bonds under the provision of this act shall not directly or indirectly or contingently  
144 obligate the commonwealth or any political subdivision thereof to levy or to pledge any form of  
145 taxation whatever therefore or to make any appropriation of their payment."