

HOUSE No. 4771

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.

The Commonwealth of Massachusetts

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In the Year Two Thousand Ten
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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 By striking out all after the enacting clause and inserting in place thereof the following:

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

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

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

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

12 following paragraph:

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

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

19 commonwealth for the purposes of such fund, any proceeds from the sale of notes or
20 bonds to the extent provided in the resolution, trust agreement or indenture of the authority
21 authorizing issuance thereof, any other monies or funds of the authority that the authority
22 determines to deposit in the fund and any other monies which may be available to the authority
23 only for the purpose of such fund from any other source or sources. All monies held in the fund,
24 except as hereinafter provided, shall be used solely for the payment of the principal of bonds of
25 the

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

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

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

51 (iii) To assure the continued operation and solvency of the authority for the carrying out
52 of the public purposes of this act, provision is made in subparagraph (i) for the accumulation in a
53 Community Hospital and Community Health Center Capital Reserve Fund of an amount equal to
54 the maximum amount of principal and interest maturing and becoming due in a succeeding

55 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
73 applied to obligations to which money in the Community Hospital and Community Health
74 Center Capital Reserve Fund may be applied shall be counted as money in the fund. For the
75 purposes of this paragraph, in calculating the maximum amount of interest due in the future on
76 variable rate bonds or bonds with respect to which the interest rate is not at the time of

77 calculation determinable, the interest rate shall be calculated at the maximum interest rate on
78 such bonds or

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

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

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

99 (iii) to replenish the fund as a result of a loan payment default by the nonprofit community
100 hospital or nonprofit community health center; and (c) require compliance by the nonprofit
101 community hospital or nonprofit community health center or the authority with any other terms
102 and conditions that the secretary of health and human services and the secretary of
103 administration and finance considers appropriate in connection with the loan.

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

115 (ix) If the authority further notifies the secretary of administration and finance in
116 writing that no other arrangements are satisfactory, the secretary shall direct the
117 comptroller to make available to the authority without further appropriation any funds withheld
118 from the institution under subparagraph (viii). The authority shall apply the funds to the costs
119 incurred by the institution, including payments required to be made to the authority or trustee for
120 any bondholders of debt service on any bonds issued by the authority for the institution or

121 payments to replenish the Community Hospital and Community Health Center Capital Reserve
122 Fund or

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

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

135 (xi) Notwithstanding any general or special law to the contrary, in the event that a
136 nonprofit community hospital or nonprofit community health center fails to reimburse the
137 commonwealth for any transfers made by the commonwealth to the authority to replenish the
138 Community Hospital and Community Health Center Capital Reserve Fund in accordance with
139 subparagraph (iii) within 6 months after any such transfer and as otherwise provided in
140 accordance with the terms of the agreement among the nonprofit community hospital or
141 nonprofit community health center, the authority and the commonwealth authorized under
142 subparagraph (vii), the secretary of administration and finance may, in his sole discretion, direct

143 the comptroller to withhold any funds in the comptroller's custody that are due or payable
144 to the nonprofit community hospital or nonprofit community health center to cover all or a
145 portion of the amount the nonprofit community hospital or nonprofit community health center
146 has failed to pay to the commonwealth to reimburse the commonwealth for any such transfers.
147 All contracts issued by the group insurance commission, the commonwealth health insurance
148 connector authority and MassHealth to a third party for the purposes of providing health care
149 insurance paid for by the commonwealth shall provide that, at the direction of the secretary of
150 administration and finance, the third party shall withhold payments to a nonprofit community
151 hospital or nonprofit community health center which fails to reimburse the commonwealth in
152 accordance with the agreement authorized under subparagraph (vii) and shall transfer the
153 withheld amount to the commonwealth. Any such withheld amounts shall be considered to have
154 been paid to the nonprofit community hospital or nonprofit community health center for all

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

159 (xii) Notwithstanding any general or special law to the contrary, in the event that the
160 commonwealth has not been fully reimbursed the amount of any transfer made pursuant to this
161 subsection (g) as of the one year anniversary of such transfer, the authority shall pay to the
162 commonwealth an amount equal to that portion of the transfer for which the commonwealth has
163 not yet received reimbursement as of said anniversary. Said reimbursement shall be completed
164 pursuant to a schedule determined by the secretary of administration and finance. Said
165 reimbursement shall not interfere with the obligations of a nonprofit community hospital or

166 nonprofit community health center pursuant to subsection (g)(xi). Any funds received by the
167 commonwealth pursuant to subsection (g)(xi) which exceed the full reimbursement to the
168 commonwealth from the authority required by this subsection (g)(xii), shall be paid to the
169 authority.

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

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

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

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