

THE CASE TO SUPPORT S2208
A MORAL BOND PROGRAM FOR COMMUNITY HOSPITALS AND COMMUNITY
HEALTH CENTERS
JANUARY 2010

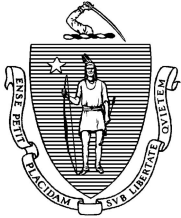
1. There is an established need for community hospitals and health centers to renovate add technology and eventually expand to meet the ever rising needs of our current population as well as expected new needs arising from our elderly population. Some estimates point to a need to replace all the beds that have been taken out of the system since the 1990's.
2. Hospitals meet the need for capital by either drawing on fundraising and endowment earnings, profit from operations, or borrow.
3. Massachusetts hospitals have relied upon the debt markets to meet capital needs more than most other states due to very thin endowments, and very poor profitability. Many hospitals are required to obtain credit enhancements (bond insurance, etc.) due to their poor profitability. This is an expensive add-on to the overall cost of debt. Most hospitals rely upon tax exempt financing through HEFA to get the best rates given the circumstances.
4. A little known program has existed for over twenty years in Maine whereby hospitals are able to enter the debt market through the state bonding authority (MHHEFA) using moral obligation bonds. The state has no legal obligation to repay the Bonds. This program has allowed Maine hospitals access to capital at interest rates and costs below what Massachusetts hospitals can achieve. There is no cost to the state for this program. It is so successful that now many other non-profits are able to access capital that would have been prohibitively expensive or simply not available. Maine has issued over 100 bond issues of this type.
5. Savings arise from a lower interest rate since the Bonds are typically rated at one notch (A) below the Commonwealth's bond rating, currently at AA. Bond insurance cost can be dramatically reduced and cost of issuance as well. The potential savings to community hospitals can be dramatic. For our examined hospitals the savings at each hospital approximated \$1m annually in reduced debt service.
6. This program has been vetted in a long process. In the 2008-9 session, the proposed bill successfully passed through the Joint Committee on Hospital Finance, The Joint Committee on Bonding, Capital Expenditures and State

Assets and the Senate. It failed to come out of House Ways and Means in the last moments of the session. In the 2009-2010 session, it has successfully passed out of the Joint Committee on Health Care Finance, the Senate Committee on Bonding, Capital Expenditures, and State Assets, the Senate and now is at House Bonding. Educational sessions have been held with the Legislature and the Executive Director of Maine HHEFA. It has been evaluated for constitutionality and determined to be compliant.

7. Throughout this process the bill has gained the support of MHA, MASS. Association of Health Plans, AIM, Blue Cross, The Massachusetts League of Community Health Centers and SEIU among others.
8. The proposed bill is actually stronger than the Maine program and thus the minimal risk associated with the program is further reduced mainly through a funding intercept feature that captures Medicaid, safety net and Commonwealth care funds to offset any deficiency in the required capital reserve fund mandated by the legislation.
9. The bill will not only reduce the cost of care and potentially health insurance premiums, but will also be a stimulus to accelerate projects currently held up and thus create new jobs for the Commonwealth.
10. If the bill does not pass then most, but not all, Massachusetts hospitals will eventually have access to capital but will pay higher rates that are simply premium payments to investors and insurance companies using dollars that otherwise could be channeled to support clinical care or lower costs overall. The high cost teaching sector, currently accounting for 53% of patient days will continue to expand without a significant and commensurate growth in the community hospital sector.
11. This bill is a perfect example of a win-win outcome. For the State, it is a cost free program that leverages state regulation and existing oversights and directly impacts the Medicaid budget. For hospitals it reduces economic waste that can be used to provide community services threatened by lack of funding.

Senate, No. 2208

[Senate, November 17, 2009 – Ethics and Rules recommended new draft for Senate, No. 2207]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND 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
17 commonwealth for the purposes of such fund, any proceeds from the sale of notes or bonds to
18 the extent provided in the resolution, trust agreement or indenture of the authority authorizing
19 issuance thereof, any other monies or funds of the authority that the authority determines to
20 deposit in the fund and any other monies which may be available to the authority only for the
21 purpose of such fund from any other source or sources. All monies held in the fund, except as
22 hereinafter provided, shall be used solely for the payment of the principal of bonds of the
23 authority which are secured by any such fund as the same mature, which herein shall include
24 becoming payable by sinking fund installment, the purchase of such bonds, the payment of
25 interest on such bonds, or the payment of any redemption premium required to be paid when
26 such bonds are redeemed prior to maturity; provided, however, that, monies in a Community
27 Hospital and Community Health Center Capital Reserve Fund shall not be withdrawn therefrom
28 at any time in such amount as would reduce the amount of the fund to less than the maximum

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

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

48 (iii) To assure the continued operation and solvency of the authority for the carrying out
49 of the public purposes of this act, provision is made in subparagraph (i) for the accumulation in
50 a Community Hospital and Community Health Center Capital Reserve Fund of an amount equal

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

63 (iv) For the purposes of this paragraph, 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 the 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 paragraph, the amount of a letter of credit, insurance
69 contract, surety bond or similar financial undertaking available to be drawn upon and applied to
70 obligations to which money in the Community Hospital and Community Health Center Capital
71 Reserve Fund may be applied shall be counted as money in the fund. For the purposes of this
72 paragraph, in calculating the maximum amount of interest due in the future on variable rate

73 bonds or bonds with respect to which the interest rate is not at the time of calculation
74 determinable, the interest rate shall be calculated at the maximum interest rate on such bonds or
75 such lesser interest rate as shall be certified by the authority as an appropriate proxy for such
76 variable or nondeterminable interest rate.

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

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

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

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

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

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

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

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

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

158 SECTION 4. Section 12 of said chapter 614 is hereby amended by striking out the last sentence
159 and inserting in place thereof the following sentence:- Except as otherwise provided in paragraph (g) of
160 section 10, the issuance of revenue bonds under this act shall not directly, indirectly or contingently

161 obligate the commonwealth or any political subdivision thereof to levy or to pledge any form of taxation
162 therefor or to make any appropriation for payment of those bonds.