

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Robert A. O'Leary**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act To Create a Community Hospital Reserve Fund.**

PETITION OF:

NAME:

Robert A. O'Leary

DISTRICT/ADDRESS:

Cape and Islands

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## 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 hereby further  
2 amended by inserting after subsection (f) the following new subsection:

3

4 (g) Community hospital capital reserve fund.

5

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

15

16 All monies held in the community hospital capital reserve fund, except as hereinafter provided, shall be  
17 used solely for the payment of the principal of bonds of the authority which are secured by such  
18 community hospital capital reserve fund as the same mature (which herein shall include becoming  
19 payable by sinking fund installment), the purchase of such bonds, the payment of interest on such  
20 bonds, or the payment of any redemption premium required to be paid when such bonds are redeemed  
21 prior to maturity; provided, however, that, monies in a community hospital capital reserve fund shall not  
22 be withdrawn there from at any time in such amount as would reduce the amount of such fund to less  
23 than the maximum amount of principal and interest maturing and becoming due in any succeeding

24 calendar year on outstanding bonds which are secured by such community hospital capital reserve fund,  
25 except for the purpose of paying the principal of and interest on such bonds maturing and becoming due  
26 or for the retirement of such bonds in accordance with the terms of any contract between the authority  
27 and its bondholders and for the payment of which other monies pledged to secure such bonds are not  
28 available. Any income or interest earned by, or increment to, a community hospital capital reserve fund  
29 due to the investment thereof shall be used by the authority for the purposes of such community  
30 hospital capital reserve fund.

31

32 (ii) The authority shall not issue bonds which are secured by a community hospital capital

33 reserve fund at any time if the maximum amount of principal and interest maturing or becoming due in  
34 a succeeding calendar year on such bonds then to be issued and on all other outstanding bonds of the  
35 authority which are secured by such community hospital capital reserve fund will exceed the amount of  
36 such community hospital capital reserve fund at the time of issuance unless the authority, at the time of  
37 issuance of such bonds, shall deposit in such fund from the proceeds of the bonds so to be issued, or  
38 otherwise, an amount which, together with the amount then in such fund, will be not less than the  
39 maximum amount of principal and interest maturing and becoming due in any succeeding calendar year  
40 on such bonds then to be issued and on all other outstanding bonds of the authority which are secured  
41 by such community hospital capital reserve fund.

42

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

58

59 (iv) For the purposes of this subsection in computing the amount of a community hospital  
60 capital reserve fund, securities in which all or a portion of such fund are invested shall be valued at par,  
61 or if purchased at less than par, at their cost to the authority, unless otherwise provided in the  
62 resolution, trust agreement or indenture authorizing the issuance of bonds secured by the fund.

63

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

72

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

76

77 (vii) Notwithstanding any provision of this act to the contrary, no loan shall be made to a nonprofit  
78 community hospital by the authority from proceeds of bonds secured by a community hospital capital  
79 reserve fund established under this paragraph unless: (a) the project to be financed by the loan has  
80 been approved by the secretary of health and human services; and (b) the loan and the issuance and  
81 terms of the related bonds have been approved by the secretary of administration and finance. In  
82 connection with any loan to a nonprofit community hospital pursuant to this paragraph, the secretary of  
83 health and human services and the secretary of administration and finance may enter into an  
84 agreement with the authority and the nonprofit community hospital to (a) require that the nonprofit  
85 community hospital provide financial statements or other information relevant to the financial condition  
86 of the nonprofit community hospital and its compliance with the terms of the loan, (b) require that the  
87 nonprofit community hospital reimburse the commonwealth for any amounts the commonwealth  
88 transfers to the community hospital capital reserve fund under subparagraph (iii) to replenish the fund  
89 as a result of a loan payment default by the nonprofit community hospital, and (c) require compliance  
90 by the nonprofit community hospital or the authority with any other terms and conditions the  
91 secretaries may consider appropriate in connection with the loan.

92

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

104

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

113

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

122

123 (xi) Notwithstanding any general or special law to the contrary, in the event that a nonprofit community  
124 hospital fails to reimburse the commonwealth for any transfers made by the commonwealth to the  
125 authority to replenish the community hospital capital reserve fund in accordance with subparagraph (iii)  
126 within 6 months of any such transfer and as otherwise provided in accordance with the terms of the  
127 agreement among the nonprofit community hospital, the authority and the commonwealth authorized  
128 under subparagraph (vii), the secretary of administration and finance may, in her sole discretion, direct  
129 the comptroller to withhold any funds in the comptroller's custody that are due or payable to the  
130 nonprofit community hospital has failed to pay to the commonwealth to reimburse the commonwealth  
131 for any such transfers. All contracts issued by the group insurance commission, the health insurance  
132 connector authority and MassHealth to any third party for the purposes of providing health care  
133 insurance paid for by the commonwealth shall provide that, at the direction of the secretary of  
134 administration and finance, the third party shall withhold payments to a nonprofit community hospital  
135 which fails to reimburse the commonwealth in accordance with the agreement authorized under  
136 subparagraph (vii) and shall transfer the withheld amount to the commonwealth. Any such withheld  
137 amounts shall be considered to have been paid to the nonprofit community hospital for all other  
138 purposes of law, and the nonprofit community hospital shall be considered to have reimbursed the  
139 commonwealth for all or a portion of any such transfers to the community hospital capital reserve fund  
140 for purposes of the agreement authorized under subparagraph (vii).

141

142 (xii) For purposes of this paragraph a community hospital excludes any hospital where the ratio of the  
143 number of physician residents-in-training to the number of inpatient beds exceeds

144 0.25.

145

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

148 "Except as otherwise permitted pursuant to Section 2-10(g) of this act, the issuance of revenue bonds  
149 under the provision of this act shall not directly or indirectly or contingently obligate the commonwealth

150 or any political subdivision thereof to levy or to pledge any form of taxation whatever therefore or to  
151 make any appropriation of their payment."