AMENDMENT TO SENATE BILL 2241

AMENDMENT NO. ____. Amend Senate Bill 2241 on page 1, by replacing line 1 with the following:

"AN ACT concerning health and human services providers."; and

on page 1, immediately below line 3, by inserting the following:

"Section 3. The Illinois Health Facilities Authority Act is amended by changing Sections 2.06, 4.06, and 11 and by adding Sections 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, and 17.10 as follows:

(20 ILCS 3705/2.06) (from Ch. 111 1/2, par. 1102.06)

Sec. 2.06. Bonds. "Bonds" means bonds, notes and bond anticipation notes and any other evidences of indebtedness of the Authority issued under this Act, including refunding bonds and bonds issued under Section 17.3.

(Source: P.A. 85-1173.)

(20 ILCS 3705/4.06) (from Ch. 111 1/2, par. 1104.06)

Sec. 4.06. Issuance of bonds. To issue bonds of the Authority for any of its corporate purposes and in such

amounts as it deems necessary and to fund or refund the same all as provided in this Act, and with respect to bonds issued under Section 17.3, subject to the requirements of Sections 17.1 through 17.10.
(Source: P.A. 77-2635.)

(20 ILCS 3705/11) (from Ch. 111 1/2, par. 1111)

Sec. 11. Bonds; liability of State and political subdivisions.

(a) Bonds issued under the provisions of this Act shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof other than the Authority or a pledge of the faith and credit of the State or of any such political subdivision other than the Authority, but shall be payable solely from the funds herein provided therefor. The issuance of bonds under the provisions of this Act shall not, directly or indirectly or contingently, obligate the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in this Section contained shall prevent or be construed to prevent the Authority from pledging its full faith and credit or the full faith and credit of a health institution to the payment of bonds authorized pursuant to this Act. Nothing in this Act shall be construed to authorize the Authority to create a debt of the State within the meaning of the Constitution or Statutes of Illinois and all bonds issued by the Authority pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor. The State shall not in any event be liable for the payment of the principal of or interest on any bonds of the Authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Authority. No breach of any such pledge, mortgage, obligation or agreement may impose any pecuniary liability upon the State or any charge upon its general credit or against its taxing power.

(b) The provisions of subsection (a) do not apply to bonds issued under Section 17.3, the nature of which are as described in Section 17.6.

(Source: P.A. 77-2635.)

(20 ILCS 3705/17.1 new)

Sec. 17.1. Financially distressed provider refunding bond program; findings and declaration of policy. The General Assembly finds and declares that health care and human services providers in the State of Illinois are currently experiencing serious and sustained financial problems. These financial problems are most severe for a group of health and human services providers who receive significant amounts of funding from the State of Illinois and for a group of health care providers who serve a predominantly indigent patient population in areas of critical need throughout the State of Illinois. The financial difficulties being experienced by this group of health and human services providers has been significantly worsened as a result of failure by the State of Illinois to provide adequate funding to support essential programs and services and by the State's failure to make timely payment of amounts appropriated for payment to these providers. These institutions provide essential human services for the people of the State of Illinois. The ability of these entities effectively to carry out their mission and to provide these essential services, however, is being significantly hampered by these financial problems. It is therefore essential that the State of Illinois provide a financing mechanism to permit this group of providers to refinance, at a significantly reduced rate of interest, outstanding indebtedness previously issued for the purpose of financing or refinancing costs of acquiring, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping a health facility. Use of such a financing mechanism will permit these providers to realize significant debt service savings, which can be applied to providing expanded and improved health and human services to the neediest residents of the State of Illinois. Establishing a program is therefore declared to be in the public interest and for the public benefit.

(20 ILCS 3705/17.2 new)

Sec. 17.2. Definitions. The following words or terms, whenever used or referred to in Sections 17.1 through 17.9, have the following meanings ascribed to them, except where the context clearly requires otherwise:

(a) "Costs of issuance" means all reasonable costs incurred in connection with the issuance of the bonds including, but not limited to, legal and accounting fees and expenses, printing expenses, financial consultants' fees, financing charges (including underwriting and placement fees and discounts), printing costs, costs incurred in connection with public approvals, fees and expenses associated with obtaining a rating on the bonds, costs for the preparation of any disclosure document and other documents necessary for the issuance of the bonds, and fees of trustees, paying agents, and other fiduciaries.

(b) "Director" means Director of the Bureau of the Budget.

(c) "Financially Distressed Provider Credit Enhancement Fund" means the special fund created in the State treasury under the State Finance Act.

(d) "Minimum required debt service savings" means net present value savings, after payment of costs of issuance, paid by, on behalf of, or with respect to any qualifying provider of at least 3%. The amount of the costs of issuance properly allocated as paid by, on behalf of, or with respect to any qualifying provider shall be determined by the Authority, with the written concurrence of the Director.

(e) "Qualifying provider" means a participating health institution that is either: (i) certified as a provider under the Critical Access Hospital program or (ii) demonstrates, to the reasonable written satisfaction of the Director, that, for its last 3 fiscal years for which audited financial statements have been prepared, State funding accounted for an annual average of at least 40% of its operating revenues.

(f) "Refinance" or "refinancing" means refunding of any outstanding bonds, notes, or other indebtedness of a qualifying provider, whether or not that indebtedness has previously been issued to the Authority, whether or not interest on that indebtedness is exempt from federal income taxation, and regardless of the remaining term to maturity of that indebtedness.

(g) "State agency" means the Department of Public Aid, the Department of Public Health, the Department of Children and Family Services, the Department of Human Services, and any other department or agency of State government that enters into contracts with health institutions under which the institution is paid or reimbursed by the State for providing health or human services to persons in Illinois.

(h) "State funding" means funds received from any State agency.

(20 ILCS 3705/17.3 new)

Sec. 17.3. Issuance of bonds. On application of a qualifying provider, the Authority may issue its bonds solely for the purpose of enabling that qualifying provider to refinance all or a portion of its outstanding indebtedness. Bonds shall be issued by the Authority under this Section only in accordance with the following requirements:

(1) Bonds shall be issued only for the purpose of refinancing outstanding indebtedness of a qualifying provider that was previously issued to finance or refinance the cost of a health facility (but not including working capital, accounts receivable, and operating expenses).

(2) Bonds shall be issued only if the Director, in consultation with the Authority, determines that as a result of the refinancing: (i) the qualifying provider will realize minimum required debt service savings or (ii) the qualifying provider will realize significant economic or financial advantages that will enable it to more effectively provide health care or other human services to the people of the State of Illinois.

(3) The Authority may issue bonds for any individual qualified provider or may issue a single bond issue for a group of qualified providers. The Authority shall make that determination only with the written concurrence of the Director. The Authority and the Director are encouraged to consider issuance of a single bond issue for a group of qualified providers as a means of reducing costs of issuance and providing greater net financial and economic benefits to qualifying providers. Any single bond issue for a group of qualified providers is subject to all requirements for bond issues as established by this Act.

(20 ILCS 3705/17.4 new)

Sec. 17.4. Limitation on authorization.

(a) The Authority may issue bonds under Section 17.3 in an aggregate principal amount not to exceed $300,000,000.

(b) Bonds may be issued under Section 17.3 on or before June 30, 2003. No bonds may be issued under Section 17.3 on or after July 1, 2003. The final maturity date of bonds issued under Section 17.3 may be no later than January 1, 2024.

(c) Bonds may be issued by the Authority under Section 17.3 only after consultation with and upon receipt of the written concurrence of the Director.

(d) The maximum amount of proceeds of bonds under Section 17.3 to be loaned to, or otherwise made available for the benefit of, any individual qualifying provider may not exceed $50,000,000. For purposes of this subsection, proceeds of bonds used to pay costs of issuance paid by, on behalf of, or with respect to any qualifying provider shall not be included. The amount of costs of issuance properly allocated as paid by, on behalf of, or with respect to any qualifying provider shall be determined by the Authority, with the written concurrence of the Director.

(e) Unless specifically approved in writing by the Director, costs of issuance for each issue of bonds may not exceed one and one-half percent of the principal amount of the proceeds of sale of each issue of bonds.

(f) If any bonds are to be sold by negotiated sale, the Authority, in consultation with the Director, must comply with the competitive request for proposal process set forth in the Illinois Procurement Code and all other applicable requirements of that Code.

(g) Before the issuance of bonds for the benefit of a qualified provider, that qualified provider must enter into an agreement with the Authority, the Director, and any applicable State agency pursuant to which the qualified provider agrees, among other matters, that if amounts are withdrawn from the debt service reserve fund established under Section 17.5 as a result of the failure of that qualified provider to make timely repayment to the Authority of bond proceeds loaned to, or otherwise made available for the benefit of, that qualified provider, the State agency shall be permitted to direct the payment of any money that is otherwise due and payable to the qualified provider, up to the maximum amount of that withdrawal from the debt service reserve fund, into the Financially Distressed Provider Credit Enhancement Fund.

(20 ILCS 3705/17.5 new)

Sec. 17.5. Debt service reserve funds.

(a) In connection with the issuance of each series of bonds, the Authority must create and establish a debt service reserve fund to be maintained by a trustee, separate and segregated from all other funds and accounts of the Authority. The Authority may, however, in consultation with the Director, establish one debt service reserve fund for the benefit of 2 or more series of bonds. The amounts required to be on deposit in a debt service reserve fund shall be determined by the Authority, in consultation with and upon the written concurrence of the Director, and shall be specified in the resolution or indenture securing the bonds. Any reserve fund established under this Section shall be initially funded from bond proceeds and other moneys lawfully available to the Authority.

(b) If moneys are withdrawn from any debt service reserve fund established under subsection (a), the trustee shall immediately notify the Chairman of the Authority, who shall in turn immediately notify the Director, the State Comptroller, and the State Treasurer of the amount of that withdrawal. Upon receipt of the notification, the State Comptroller and the State Treasurer shall immediately transfer from the Financially Distressed Provider Credit Enhancement Fund to, or at the direction of, the Authority for deposit into the debt service reserve fund the amount required to restore that debt service reserve fund to the level of the debt service reserve requirement specified in the resolution or indenture securing the bonds.

(c) This Section constitutes an irrevocable and continuing appropriation from the Financially Distressed Provider Credit Enhancement Fund to any debt service reserve fund established under subsection (a) of all amounts necessary for that purpose and the irrevocable and continuing authority for and direction to the State Treasurer and the State Comptroller to make those transfers and deposits.

(20 ILCS 3705/17.6 new)

Sec. 17.6. Nature of bonds. All bonds issued under Section 17.3 shall be limited obligations of the State of Illinois payable from: (i) amounts transferred from the Financially Distressed Provider Credit Enhancement Fund to the debt service reserve fund established under Section 17.5 and (ii) amounts in any fund or account maintained pursuant to any indenture or resolution securing those bonds to the extent provided in the indenture or resolution. The bonds are not general obligations of the State of Illinois and are not secured by the full faith and credit of the State of Illinois, and the holders of the bonds may not require the levy or imposition of any taxes or the application of State revenues, other than amounts transferred from the Financially Distressed Provider Credit Enhancement Fund to the debt service reserve fund established under Section 17.5, to the payment of the bonds. Each bond shall describe the limited nature of the State's obligation on the face of the bond.

(20 ILCS 3705/17.7 new)

Sec. 17.7. Actions to compel payment. If the State fails to transfer required amounts from the Financially Distressed Provider Credit Enhancement Fund to a debt service reserve fund, as provided in Section 17.5, or from the Tobacco

Settlement Recovery Fund to the Financially Distressed Provider Credit Enhancement Fund, as provided in Section 6z-43 of the State Finance Act, a civil action to compel that transfer may be instituted in the Circuit Court of Sangamon County by the holder or holders of the bonds issued under Section 17.3. Delivery of a summons and a copy of the complaint to the Attorney General constitutes sufficient service to give the Circuit Court of Sangamon County jurisdiction of the subject matter of such a suit and jurisdiction over the State and its officers named as defendants for the purpose of compelling the transfer.

(20 ILCS 3705/17.8 new)

Sec. 17.8. Covenants with bondholders. The State of Illinois irrevocably covenants and agrees with the holders of bonds issued under Section 17.3 that the State will not alter or limit: (i) the basis on which transfers are required to be made from the Tobacco Settlement Recovery Fund to the Distressed Provider Credit Enhancement Fund, pursuant to Section 6z-43 of the State Finance Act; (ii) the basis on which transfers are required to be made from the Distressed Provider Credit Enhancement Fund to either the debt service reserve fund established under Section 17.5 or to the Tobacco Settlement Recovery Fund; or (iii) the provisions of this Act or the State Finance Act so as to impair, in any of the foregoing respects, the obligations of contract incurred in favor of the holders of bonds issued under Section 17.3. The covenant and agreement set forth in this Section may be included in a trust indenture, resolution, or bond issued under Section 17.3.

(20 ILCS 3705/17.9 new)

Sec. 17.9. Tax exemption. The exercise of the powers granted in Sections 17.1 through 17.10 are in all respects for the benefit of the people of Illinois. In consideration of that benefit, the bonds issued under Section 17.3 and the income from those bonds are free from all taxation by the State or its political subdivisions, except for estate, transfer, and inheritance taxes. For purposes of Section 250 of the Illinois Income Tax Act, the exemption of the income from bonds issued under those Sections terminates after all of the bonds have been fully paid. The amount of that income to be added to and then subtracted from federal adjusted gross income or federal taxable income on the Illinois income tax return of a taxpayer, as provided in Section 203 of the Illinois Income Tax Act, in computing Illinois base income shall be the interest net of any bond premium amortization.

(20 ILCS 3705/17.10 new)

Sec. 17.10. Generally applicable provisions. Except as specifically provided for in Sections 17.1 through 17.9, all bonds issued under Section 17.3 are subject to this Act in the same manner and to the same extent as other bonds issued under this Act.

Section 4. The State Finance Act is amended by changing Section 6z-43 and by adding Sections 5.570 and 8.45 as follows:

(30 ILCS 105/5.570 new)

Sec. 5.570. The Financially Distressed Provider Credit Enhancement Fund.

(30 ILCS 105/6z-43)

Sec. 6z-43. Tobacco Settlement Recovery Fund.

(a) There is created in the State Treasury a special fund to be known as the Tobacco Settlement Recovery Fund, into which shall be deposited all monies paid to the State pursuant to (1) the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146) and (2) any settlement with or judgment against any tobacco product manufacturer other than one participating in the Master Settlement Agreement in satisfaction of any released claim as defined in the Master Settlement Agreement, as well as any other monies as provided by law. All earnings on Fund investments shall be deposited into the Fund. Upon the creation of the Fund, the State Comptroller shall order the State Treasurer to transfer into the Fund any monies paid to the State as described in item (1) or (2) of this Section before the creation of the Fund plus any interest earned on the investment of those monies. The Treasurer may invest the moneys in the Fund in the same manner, in the same types of investments, and subject to the same limitations provided in the Illinois Pension Code for the investment of pension funds other than those established under Article 3 or 4 of the Code.

(b) As soon as may be practical after June 30, 2001, upon notification from and at the direction of the Governor, the State Comptroller shall direct and the State Treasurer shall transfer the unencumbered balance in the Tobacco Settlement Recovery Fund as of June 30, 2001, as determined by the Governor, into the Budget Stabilization Fund. The Treasurer may invest the moneys in the Budget Stabilization Fund in the same manner, in the same types of investments, and subject to the same limitations provided in the Illinois Pension Code for the investment of pension funds other than those established under Article 3 or 4 of the Code.

<u>(c) As soon as practical in fiscal year 2003, there shall be transferred from the Tobacco Settlement Recovery Fund to the Financially Distressed Provider Credit Enhancement Fund an amount to be certified by the Director of</u>

<u>the Bureau of the Budget to the State Treasurer and the State Comptroller to be equal to: (x) the amount projected by the Director to be the debt service reserve requirement to be established in connection with the issuance of the maximum amount of bonds authorized by Section 17.3 of the Illinois Health Facilities Authority Act times (y) 1.25 (the product of (x) times (y) being referred to as the "estimated amount"). On June 30, 2003, the Director shall certify to the State Treasurer and the State Comptroller: (i) the debt service reserve requirement actually established in connection with all bonds issued under Section 17.3 of the Illinois Health Facilities Authority Act (referred to as the "reserve requirement"); (ii) 125% of the reserve requirement; and (iii) the difference between the estimated amount and the amount certified under item (ii). The State Comptroller shall direct and the State Treasurer shall transfer the amount certified under item (iii) from the Financially Distressed Provider Credit Enhancement Fund to the Tobacco Settlement Recovery Fund.</u>

<u>(d) In each fiscal year, beginning with fiscal year 2004, there shall be transferred from the Tobacco Settlement Recovery Fund for deposit into the Financially Distressed Provider Credit Enhancement Fund an amount equal to the reserve requirement. This transfer shall be made in each fiscal year prior to any other use, transfer, or application of moneys in the Tobacco Settlement Recovery Fund. This Section constitutes an irrevocable and continuing appropriation from the Tobacco Settlement Recovery Fund of all amounts necessary for that purpose and the irrevocable and continuing authority for and direction to the State Treasurer and the State Comptroller to make those transfers and deposits.</u>

(Source: P.A. 91-646, eff. 11-19-99; 91-704, eff. 7-1-00; 91-797, eff. 6-9-00; 92-11, eff. 6-11-01; 92-16, eff.

6-28-01.)

(30 ILCS 105/8.45 new)

Sec. 8.45. Financially Distressed Provider Credit Enhancement Fund.

(a) The State Comptroller and the State Treasurer shall transfer into the Financially Distressed Provider Credit Enhancement Fund from the Tobacco Settlement Recovery Fund all amounts required to the transferred under subsections (c) and (d) of Section 6z-43. In addition, there shall be deposited into the Financially Distressed Provider Credit Enhancement Fund all amounts directed to be deposited into that Fund under an agreement executed in accordance with the provisions of subsection (g) of Section 17.4 of the Illinois Health Facilities Authority Act.

(b) On June 30, 2004, and on each June 30 thereafter, all amounts in the Financially Distressed Provider Credit Enhancement Fund that are in excess of 125% of the reserve requirement shall be transferred by the State Treasurer for deposit into the Tobacco Settlement Recovery Fund. This Section constitutes an irrevocable and continuing appropriation from the Financially Distressed Provider Credit Enhancement Fund of all amounts necessary for that purpose and the irrevocable and continuing authority for and direction to the State Treasurer and the State Comptroller to make those transfers and deposits.".