

## SENATE THIRD READING

SB 112 (Committee on Budget and Fiscal Review)

As Amended May 1, 2023

Majority vote. Budget Bill Appropriations Takes Effect Immediately

**SUMMARY**

This is a health trailer bill which is necessary to implement provisions of the mid-year 2022 budget package.

**Major Provisions**

This bill establishes the Distressed Hospital Loan Program (DHLP), until January 1, 2032, which will provide interest free cashflow loans to not-for-profit hospitals and public hospitals, as defined, in significant financial distress, or to governmental entities representing closed hospitals. Requires the Department of Health Care Access and Information (HCAI) to administer the DHLP and to enter into an interagency agreement with the California Health Facilities Financing Authority (CHFFA) to implement the DHLP. Specifically, this bill:

- 1) Establishes the DHLP, until January 1, 2032, to provide interest free cashflow loans to not-for-profit hospitals and public hospitals, as defined, that are in significant financial distress or to governmental entities representing closed hospitals, for purposes of preventing the closure of, or facilitating the reopening of, those hospitals.
- 2) Defines the following, for purposes of this bill:
  - a) "Closed hospital" means a hospital that closed after January 1, 2022.
  - b) "Not-for-profit hospital" means a general acute care hospital that is a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services that is organized as a not-for-profit entity.
  - c) "Public Hospital" means a hospital that is licensed to a county, a city, a city and county, the University of California, a local health care district, a local health authority, or a municipal hospital, as defined.
- 3) Requires HCAI to enter into an interagency agreement with CHFFA to implement the DHLP.
- 4) Requires HCAI, in collaboration with the California Department of Health Care Services (DHCS), the Department of Managed Health Care, and the California Department of Public Health, to develop a methodology to evaluate an at-risk hospital's potential eligibility for state assistance from the DHLP.
- 5) Requires the methodology to consider factors, including but not limited to, whether the hospital is in financial distress, as solely determined by HCAI, whether the hospital is small, rural, a critical access hospital, a trauma center, an urban hospital providing access for an underserved area, a hospital that serves a disproportionate share of Medicaid patients, or serving a rural catchment area, whether closure of the hospital would significantly impact access to services in the region, and whether the hospital is publicly owned. Requires the

methodology to also be used for identification and ongoing monitoring of hospitals at-risk of financial distress.

- 6) Allows for the methodology for determining financial distress to consider such factors as the hospital's prior and projected performance on financial metrics, including the amount of cash on hand, and whether the hospital has, or is projected to experience, negative operating margins.
- 7) Requires a hospital or closed hospital, applying for aid, to provide CHFFA and HCAI with financial information demonstrating the hospital's need for financial assistance.
- 8) Requires a hospital, prior to receiving state assistance from the DHLP, to submit a plan to CHFFA, which it must share with HCAI, with projections detailing the uses of the proposed loan and strategies proposed by the hospital's governing body to regain financial viability and continue to operate.
- 9) Prohibits HCAI, prior to issuing a loan, to review the plan submitted by a hospital and make a determination that the plan is viable and that there is a reasonable likelihood that the hospital will be able to regain financial viability and continue to operate.
- 10) Requires HCAI to issue the loan award to a qualifying hospital as soon as is reasonably practicable following its eligibility determination.
- 11) Prohibits not-for-profit hospitals and public hospitals that belong to integrated health care systems, with more than two separately licensed hospitals, from being eligible for state assistance under the DHLP.
- 12) Requires HCAI, in consultation with CHFFA to determine the application process, underwriting review, and methodology for approval and distribution of the loans under DHLP. Requires HCAI to make the methodology publicly accessible on its website.
- 13) Grants HCAI the authority to determine service provision requirements in approving, and for the duration of, loans to eligible hospitals. Requires HCAI, in making its determination, to consider the impact of any changes to the hospital's service delivery on access to necessary medical care, particularly for Medi-Cal beneficiaries.
- 14) Requires hospitals to begin making monthly repayments of the loan after the first 18 months and to discharge the loan within 72 months of the date of the loan.
- 15) Requires, to the extent permissible under federal rules, security for the loans to be Medi-Cal reimbursements due to the hospital from DHCS. Restricts HCAI or CHFFA's recoupment of the loans from exceeding 20% of the hospital's respective Medi-Cal checkwrite payments until the loan amount has been satisfied. Authorizes HCAI to extend the repayment term of the loan if a 20% withhold will not result in full repayment of the loan within a 72 month period.
- 16) Requires HCAI, in consultation with CHFFA, and upon approval of the Department of Finance, to develop an application and approval process for loan forgiveness or modification of the terms of the loan, including a delay of the beginning of the loan repayment period or an extension of the 72-month loan repayment term, or both.

- 17) Requires HCAI to establish the terms and conditions associated with accepting loan forgiveness or modification of loan terms, subject to approval of the Department of Finance.
- 18) Requires HCAI to submit to the Joint Legislative Budget Committee and relevant policy and fiscal committees of the Legislature notice of a request and subsequent action, including a summary of the request and reason for the denial, approval or modification, prior to any action taken on a request for forgiveness or modification of any loan, and again not later than 60 days after final approval or denial of the forgiveness or modification.
- 19) Establishes the Distressed Hospital Loan (DHL) Fund in the Treasury, to be administered by HCAI. Requires all moneys in the fund to be continuously appropriated, without regard to fiscal years, for HCAI and CHFFA to implement the provisions of this bill.
- 20) Requires CHFFA to make secured loans from the DHL Fund to a hospital for purposes of preventing the closure, or facilitating the reopening of the hospital.
- 21) Authorizes HCAI to allocate an amount not to exceed 5% of the total program funds to administer the DHLP, including, but not limited to, administrative costs to CHFFA. Requires any funds transferred to be available for encumbrance or expenditure until June 30, 2026.
- 22) Authorizes Department of Finance to transfer up to \$150 million from the General Fund to the DHL Fund between fiscal years 2022-23 and 2023-24 to implement this program.
- 23) Authorizes the Treasurer to invest moneys in the DHL Fund that are not required for its current needs in eligible securities as specified. Requires all interest or other increment resulting from the investment or deposit of moneys from the DHL Fund to be deposited in the DHL Fund.
- 24) Prohibits moneys in the DHL Fund from being subject to transfer to any other funds, except to the Surplus Money Investment Fund.
- 25) Authorizes HCAI and CHFFA to implement, interpret, or make specific the provisions of this bill, by means of information notices or other similar instructions, without taking any further regulatory action.
- 26) Authorizes HCAI and CHFFA to enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis. Exempts contracts entered into or amended pursuant to this provision from existing standards for the use of personal services contracts and from the review or approval of any division of the Department of General Services.
- 27) Requires the abolishment of the DHL Fund on December 31, 2031, and requires that any remaining balance, assets, liabilities, and encumbrances of the DHL Fund revert to the General Fund.
- 28) Authorizes HCAI and CHFFA to require any hospital receiving a loan to provide the state with an independent financial audit of the hospital's operations for any fiscal year in which a loan is outstanding.
- 29) Requires the provisions of this bill to remain in effect until January 1, 2032, and as of that date to be repealed.

- 30) Adds the following requirements to hospitals' existing financial and utilization data that is reported to HCAI on a quarterly basis:
- a) Revenues attributable to commercial insurance coverage specific to the total amount of a hospitals inpatient gross revenues;
  - b) Revenues attributable to commercial insurance coverage specific to the total number of inpatient days, outpatient visits, and discharges attributable to commercial insurance coverage; and,
  - c) A balance sheet detailing the assets, liabilities, and net worth at the end of the quarter in the detail as specified by the department.
- 31) Requires HCAI to allow and provide for, in accordance with appropriate regulations, additions or deletions to the summary financial and utilization data to meet the purposes of this bill.
- 32) Authorizes HCAI to adopt regulations, including emergency regulations, necessary to implement this section.
- 33) Declares this act is a bill providing for appropriations related to the Budget Bill, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

## COMMENTS

This bill is a budget trailer bill to establish the Distressed Hospitals Loan Program, to provide assistance to public and not-for-profit hospitals that are at risk of closing, and to governmental entities representing closed hospitals.

### According to the Author

#### Arguments in Support

None on file.

#### Arguments in Opposition

None on file.

## FISCAL COMMENTS

This bill authorizes the transfer of up to \$150 million from the General Fund to the Distressed Hospitals Loan Fund, being created by this bill, to implement this bill.

## VOTES

### SENATE FLOOR: 29-8-3

**YES:** Allen, Alvarado-Gil, Archuleta, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Skinner, Smallwood-Cuevas, Umberg, Wahab, Wiener

**NO:** Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

**ABS, ABST OR NV:** Ashby, Rubio, Stern

**UPDATED**

VERSION: May 1, 2023

CONSULTANT: Andrea Margolis / BUDGET / (916) 319-2099

FN: 0000286