

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE**

May 5, 2004

1:56 p.m.

TAPE (S) 04-29

**MEMBERS PRESENT**

Senator Fred Dyson, Chair  
Senator Lyda Green, Vice Chair  
Senator Gary Wilken  
Senator Bettye Davis  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 511(HES) am  
"An Act relating to the certificate of need program for health care facilities; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 511

SHORT TITLE: CERTIFICATE OF NEED PROGRAM

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	HES, FIN
03/02/04	(H)	HES AT 3:00 PM CAPITOL 106
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(HES)
03/04/04	(H)	HES AT 3:00 PM CAPITOL 106
03/04/04	(H)	Heard & Held
03/04/04	(H)	MINUTE(HES)
03/18/04	(H)	HES AT 3:00 PM CAPITOL 106
03/18/04	(H)	Moved CSHB 511(HES) Out of Committee
03/18/04	(H)	MINUTE(HES)
03/24/04	(H)	HES RPT CS(HES) 3DP 1DNP 2NR
03/24/04	(H)	DP: KAPSNER, CISSNA, WILSON; DNP: WOLF;
03/24/04	(H)	NR: GATTO, COGHILL

03/29/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/29/04 (H) Heard & Held  
 03/29/04 (H) MINUTE(FIN)  
 03/31/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/31/04 (H) Moved CSHB 511(HES) Out of Committee  
 03/31/04 (H) MINUTE(FIN)  
 04/01/04 (H) FIN RPT CS(HES) 4DP 2NR 2AM  
 04/01/04 (H) DP: MEYER, HAWKER, HARRIS, WILLIAMS;  
 04/01/04 (H) NR: FATE, FOSTER; AM: STOLTZE, CHENAULT  
 04/26/04 (H) MOVED TO BOTTOM OF CALENDAR  
 04/26/04 (H) NOT TAKEN UP 4/26 - ON 4/27 CALENDAR  
 04/27/04 (H) NOT TAKEN UP 4/27 - ON 4/28 CALENDAR  
 04/28/04 (H) TRANSMITTED TO (S)  
 04/28/04 (H) VERSION: CSHB 511(HES) AM  
 04/29/04 (S) READ THE FIRST TIME - REFERRALS  
 04/29/04 (S) HES, FIN  
 04/30/04 (S) HES AT 1:30 PM BUTROVICH 205  
 04/30/04 (S) Heard & Held  
 04/30/04 (S) MINUTE(HES)  
 05/03/04 (S) HES AT 1:30 PM BUTROVICH 205  
 05/03/04 (S) Heard & Held  
 05/03/04 (S) MINUTE(HES)  
 05/04/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 05/04/04 (S) <Pending Referral>  
 05/05/04 (S) HES AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

MS. SARA NIELSEN  
 Staff to Representative Ralph Samuels  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Spoke on behalf of the sponsor.

MS. JEAN MISCHEL  
 Legislative Legal Services  
 Alaska State Capitol  
 Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions pertaining to HB 511.

MS. JANET CLARK  
 Department of Health & Social Services (DHSS)  
 PO Box 110601  
 Juneau, AK 99801-0601

**POSITION STATEMENT:** Answered questions pertaining to HB 511.

**ACTION NARRATIVE**

**TAPE 04-29, SIDE A**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:56 p.m. Present at the call to order were Senators Green, Wilken, and Chair Dyson. Senators Davis and Guess arrived while the meeting was in progress.

**HB 511-CERTIFICATE OF NEED PROGRAM**

The committee took up CSHB 511(HES)am.

CHAIR DYSON referred to page 2, line 3, (version A) and offered an amendment, designated as Amendment 1.

**A M E N D M E N T 1**

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: CSHB 511(HES) am

Page 2, line 1:

Delete "new subsections"

Insert "a new subsection"

Page 2, lines 2 - 3:

Delete all material.

Page 2, line 4:

Delete "(e)"

Insert "(d)"

Page 5, line 10:

Delete "and (e)"

Delete "apply"

Insert "applies"

CHAIR DYSON explained that with this amendment, a health care facility that has gotten a Certificate of Need (CON) approved and has been in business can move that same capacity without going through the CON process. It deletes the existing section (d), [page 2], lines 2 and 3 indicating this can only be done once. The department agrees that as long as it's the same capacity and the same community, it can be moved.

SENATOR LYDA GREEN objected.

MS. SARA NIELSEN, Staff to Representative Ralph Samuels, sponsor of HB 511, testified that the sponsor would not have a problem with the amendment.

CHAIR DYSON added that the department would not have a problem with this either.

SENATOR GREEN asked if this was just the deletion of lines 2 and 3, and everything else would be conforming.

CHAIR DYSON confirmed this was the case and said, "The rest of it just cleans it up."

SENATOR GREEN asked if this just moves everything up and changes (e) to (d).

CHAIR DYSON said yes. He asked if the objection was maintained.

SENATOR GREEN wondered if "apply" was now in the singular.

SENATOR GRETCHEN GUESS referred Senator Green to page 5, line 10.

SENATOR GUESS said for the record that one reason this section can be deleted is because of the understanding on page 1, line 7, that "in order to relocate the services" means the entire services, so there will not be a two-for-one situation whereby those services can be moved.

MS. NIELSEN confirmed this was correct. She said [Legislative] Legal's opinion of "relocate" means these services.

SENATOR GUESS asked if it applies to [services], and received confirmation this was correct.

CHAIR DYSON said for the record it does not refer to a previous facility where the services are located that is not under an approved CON - this will not be grandfathered - the CON moves with the service.

CHAIR DYSON asked again if the objection was maintained. [It was not.] Amendment 1 was adopted.

Amendment 2 was distributed to members.

CHAIR DYSON explained that two or three new kinds of facilities are included, and would now be included under the CON process.

Amendment 2 indicates that if somebody already has a project underway - with plans, a building permit, and is moving dirt - they are grandfathered in. The rules aren't being changed for somebody who is already committed to a project, which only seems fair. [Amendment 2 reads as follows:]

## AMENDMENT 2

### **Senator Davis**

OFFERED IN SENATE HESS

TO: HB 511

Page 5, Line 16:

Add:

(c) AS 18.07.043, enacted by sec. 4 of this Act, does not apply to a health care facility that is under construction on the effective date of this Act if

- (1) the health care facility is in compliance with all (other) applicable requirements; and
- (2) the health care facility's project under construction
  - (A) includes completed architectural plans approved by the applicable authority;
  - (B) has acquired a building permit;
  - (C) has begun the construction of the building's foundation; and
  - (D) will be completed within two years of the effective date of this Act.

SENATOR BETTYE DAVIS moved to adopt Amendment 2.

SENATOR GARY WILKEN objected and asked if this amendment would apply to a situation wherein architectural plans exist but a building permit has not been acquired. He asked if [(A),(B),(C),(D)] are required?

SENATOR DAVIS responded the department said these were necessary.

SENATOR WILKEN removed his objection.

SENATOR GUESS referred to the statement, "(1) the health care facility is in compliance with all applicable requirements" and

asked if, according to Legislative Legal this includes CON. She requested a circular reference.

MS. NIELSEN said the drafter was on-line.

MS. JEAN MISCHEL, Legislative Legal Services, testified that there may be an ambiguity that went unnoticed. It could say all other applicable federal, state, and local laws. This subsection makes it clear that it's not applicable, so there shouldn't be a conflict. In other words, the applicability section takes it out of a CON requirement. To be completely clear, the word "other" could be added in between the words "all" and "applicable."

SENATOR GUESS moved to amend Amendment 2 to insert the word "other" between "all" and "applicable."

CHAIR DYSON asked if there was any objection. There being none, the amendment to Amendment 2 was adopted.

SENATOR GREEN referred to "(D) will be completed within two years of the effective date of this Act" and asked if it wasn't completed within two years, would there be a process by which that process ends, and they're not grandfathered.

CHAIR DYSON responded this was implied, and it would be subject to the CON process.

SENATOR GREEN asked where (c) AS 18.07.043 would be inserted in the bill.

MS. MISCHEL replied that this would not go into codified law in the statutes; it's a temporary applicability permission that is in session law.

CHAIR DYSON asked if the objection was maintained.

SENATOR WILKEN withdrew his objection.

CHAIR DYSON announced Amendment 2 as amended was adopted.

SENATOR GREEN moved the Letter of Intent [referred to as Amendment 3 during the meeting]:

HB 511      **Letter of Intent**  
                 [as amended]

It is the intent of the Legislature that the Commissioner of the Department of Health and Social Services convene a task force to review existing Certificate of Need procedures and standards. The task force shall identify measures to improve the efficiency and effectiveness of the Certificate of Need Program. The task force shall include members who represent a broad range of health care facilities [and]  , providers , and representatives with a background in health care policy development. The task force will report its findings and recommendations directly to the Commissioner.

It is further the intent of the Legislature that the Commissioner of the Department of Health and Social Services move expeditiously to update Certificate of Need regulations, policies, and procedures including developing standards including those for concurrent review, the public release of documents under the certificate of need program, and time lines regarding the certificate of need process. In so doing, the Commissioner shall fully consider the recommendations of the Certificate of Need task force.

[The House adopted the above letter of intent, with new language underlined and bolded.]

SENATOR GREEN said the department helped in the drafting, and this addresses the concern for the current inadequacy between statutes and regulations, and developing the standards for concurrent review. Another concern is a public release of documents under the CON program in which information is released too soon. She said document release should not take place until someone has committed to a project, the application is complete and they're going to move forward. It should not occur when a letter of intent is complete, for that could lead to disclosure of proprietary information.

SENATOR WILKEN asked if the House also has a Letter of Intent.

SENATOR GREEN said yes and this supersedes that letter; the underlined sections are the additions.

SENATOR GUESS asked for an explanation of, "including developing standards for concurrent review."

SENATOR GREEN said there have been times when more than one provider of services has filed a Letter of Intent, and another has coincidentally filed and begun the process at the same time. There is a concurrent comparative review that is conducted by the CON assessment people. She said this could become cumbersome, and it is desirable for the privacy section to apply until the CON application is deemed complete. The information provided to the department should not be public information until there's a bona fide move forward with the application because that is very proprietary information. A hospital or group that wants to expand may begin the process and decide to come back in three or four years. If the word is on the street, everyone knows of the intention to expand, move or whatever. If that certificate applicant wants to share that information that's fine, but if not, then that information should be withheld.

SENATOR GUESS asked if there was a reason why policies and procedures are not mentioned regarding objective criteria and that the procedures of determining CON be expeditiously updated. She commented that it is disturbing that the commissioner couldn't say how CON decisions are made. She asked if there is a reason why policies and procedures weren't included in the letter.

MS. JANET CLARK, Division of Administrative Services, Department of Health & Social Services (DHSS) said it was included in the second paragraph where it says, "move expeditiously to update Certificate of Need regulations, policies and procedures including developing standards for concurrent review." Ms. Clark said there might have been a drafting error, as the intent was to say "developing standards, including those for concurrent review." She said the department's intent is to support being urged to expeditiously develop those written standards.

SENATOR GUESS asked how adding "including those" addresses this.

MS. CLARK responded the Letter of Intent pertains to the CON, and the department is in the process of developing standards for the program.

SENATOR GUESS said the point is more about "determination of CON" but she would trust the department on this.

SENATOR GREEN moved to amend the Letter of Intent by adding "including those" in the fourth line from the bottom of the second paragraph of the Letter of Intent.

CHAIR DYSON asked if there was any objection. There being none, the amendment to the [Letter of Intent] was adopted.

SENATOR GREEN moved to adopt the Letter of Intent.

CHAIR DYSON asked if there was any objection. There being none, the Letter of Intent [referred to as Amendment 3] as amended was adopted.

MS. NIELSEN told members she could speak to a further conceptual amendment. She explained that page 2, lines 4 and 5 addresses the net present value of the lease or space for the \$1 million in the expenditure. There is no current definition of "expenditure" in the CON, so the amendment would add this definition, and delete lines 4 and 5 on page 2.

MS. MISCHEL offered an unrevised version. She re-stated the intent is to move the definition of "expenditure" and to delete lines 4 and 5 on page 2. On page 5, following line 7, a new definition would read: "(11) 'expenditure' means a payment made for one or more purposes described under AS 18.07.031 and includes the purchase of property occupied by or the equipment required by the health care facility and the net present value of the lease or space occupied by or the equipment required from the health care facility." She pointed out a technical conforming change on page 5, line 10, the deletion of "and (e)."

SENATOR GUESS said she worked on this amendment with the sponsor and asked about including purchase, lease, and some equivalent of other creative financing mechanisms that an accountant might find, one day. She said it was critical for the diagnoses testing facilities and that she was looking to the sponsor for some help on replacement and upgrade so as to not set up a situation whereby someone in business has to replace a machine in five years and possibly be denied the CON. She said her intent in defining "expenditure" was to cover everything and also to clarify what it isn't.

MS. MISCHEL responded that the definition could be amended to read, "an expenditure does not include costs associated with routine maintenance and replacement of equipment at an existing health care facility." She responded to Senator Guess's question, saying that creative accounting principles had been contemplated in this drafting. She pointed out that the use of "and includes" is not limiting, so those are examples of specific expenditures that would be included but it doesn't

exclude other types of expenditures. She said the use of the phrase "payment made for one or more purposes" was as broad as she could make it.

SENATOR WILKEN referred to page 2, lines 4 and 5, regarding an expenditure being the net present value of a lease and/or equipment, and according to what is being proposed, asked what the list would now look like.

MS. MISCHEL responded that the amendment moves that language to the back of AS 18.07 in the event that the word "expenditure" is used in a different section. It also applies to purchases.

SENATOR WILKEN asked, "Purchases of [what]?"

MS. MISCHEL responded purchases of property occupied by the facility, or equipment required for the facility. She said another addition was the phrase, "payment made for one of the purposes under the CON statute."

SENATOR WILKEN asked why "net present value" is used rather than just "present value."

MS. MISCHEL said she was asked to preserve the language, "net present value" from the original, and it's a policy call.

SENATOR WILKEN stated that he knows what "present value" is, but not "net present value."

MS. NIELSEN repeated this language was carried forward.

SENATOR GUESS suggested that in this context, "net present value" might be the value of the lease. One would have to go through the future years of the lease and back out the opportunity costs of spending that money somewhere else, to actually have a value of that lease versus a one-time payment on the present value. A lease's present value would be the payment of that year, but if it's a lease for five years, one wants the value of that entire lease.

SENATOR WILKEN asked, "What do you back out of the present value to make it a net present value?"

SENATOR GUESS replied, "opportunity costs, and money" which is normally reflected in inflation.

The committee took an at-ease.

[No further business was conducted on record.]

[The committee was recessed to the call of the Chair at 2:45 p.m.]

CSHB 511(HES)am was held in committee.