

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

May 6, 2004

5:13 p.m.

TAPE (S) 04-30

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."

MOVED SCS CSHB 511(HES) OUT OF COMMITTEE

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
 05/05/04 (S) Heard & Held
 05/05/04 (S) MINUTE(HES)
 05/06/04 (S) HES AT 5:00 PM FAHRENKAMP 203

WITNESS REGISTER

MR. JOEL GILBERTSON, Commissioner
 Department of Health and Social Services (DHSS)
 PO Box 110601
 Juneau, AK 99801-0601
POSITION STATEMENT: Presented information pertaining to HB 511.

MS. JANET CLARK
 Department of Health &
 Social Services
 PO Box 110601
 Juneau, AK 99801-0601
POSITION STATEMENT: Answered questions on HB 511.

MR. GEORGE LARSON, CEO
 Valley Hospital
 515 E. Dahlia Ave.

Palmer, Alaska 99645

POSITION STATEMENT: Answered a question pertaining to HB 511.

ACTION NARRATIVE

TAPE 04-30, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 5:13 p.m. Present at the call to order were Senators Davis, Wilken, Green, and Co-Chair Dyson. Senator Guess arrived while the meeting was in progress.

HB 511-CERTIFICATE OF NEED PROGRAM

The committee took up CSHB 511(HES)am.

SENATOR LYDA GREEN referred to page 1, line 4 and offered a conceptual amendment. She reported that information from around the nation reveals that more than half of the CON programs have a category for medical equipment. The capital investment on the facility itself is another category. She said she doesn't understand "net present value" and wants to ensure that a barrier hasn't been built for someone who might need equipment replacement, expansion, and upgrade. She offered an amendment [Amendment 1] whereby there would be an additional \$1 million provided for medical equipment. She said she wasn't sure if medical equipment was the correct word, or if it needs to be limited to a certain type of facility. She said the intent was to have a category for medical equipment of \$1 million, as well as a facility category of \$1 million.

CHAIR DYSON asked if that was a motion

SENATOR GREEN confirmed this was a motion to adopt the amendment.

SENATOR DAVIS objected, wanting further discussion to better understand the amendment. She asked if this amendment was related to the work being done by Senator Guess.

The committee took a brief at-ease.

CHAIR DYSON asked Senator Green to withdraw her [motion to adopt the amendment].

SENATOR GREEN said she would be delighted, and withdrew the motion.

CHAIR DYSON said the committee would take up Senator Guess's amendment, designated as Amendment 4.

SENATOR GUESS moved Amendment 4.

SENATOR WILKEN objected [non-verbally].

SENATOR GUESS explained Amendment 4.

A M E N D M E N T 4

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSHB 511(HES) am

Page 2, lines 4 - 5:

Delete all material and insert:

"(e) In (a) of this section, "expenditure" includes the purchase of property occupied by or the equipment required for the health care facility and the net present value of a lease for space occupied by or the equipment required for the health care facility; "expenditure" does not include costs associated with routine maintenance and replacement of equipment at an existing health care facility."

SENATOR GUESS said "expenditure" had been defined in the bill as only the net present value of lease equipment, which leaves open several questions. For example, is purchasing the equipment an expenditure? The Legislature's intent is that a purchase or a net present value of a lease be considered as an expenditure. Also, what's not included goes according to regulation. She said if someone is trying to replace a piece of equipment, it's not the purpose of the CON to indicate that a new CON is needed. The capacity is the same. She said she just included what was in regulation to be clear that if someone was replacing equipment, that's not part of the CON process.

SENATOR WILKEN asked Senator Guess which part of the amendment was in existing regulation/law.

SENATOR GUESS replied line 6, "'expenditure' does not include" is current regulation; the rest is not current regulation or law, as expenditure has not been defined. HB 511 defined it

only as the net present value of the lease, without discussing the purchase.

SENATOR GREEN asked for the effect of Amendment 4.

SENATOR GUESS said her intent is to clarify what she thought the committee had previously expressed, which is a CON is currently needed on \$1 million or more for either the purchase or lease of equipment for a health care facility, but this is not for replacement or for routine maintenance; there needs to be clarity around expenditure.

MR. JOEL GILBERTSON, Commissioner of the Department of Health and Social Services (DHSS), commented that this amendment does clarify "expenditure," and it is correct that if an MRI machine needs to be replaced or there is replacement of equipment, a new CON is not required, so this would simply put in statute the current CON regulation/operation.

SENATOR WILKEN asked how lines 3, 4, and 5 differ from how things currently operate today.

MS. JANET CLARK, Division of Administrative Services, DHSS, said "net present value" is in the current version of HB 511. Basically the biggest change is that "expenditure" is not defined in statute.

COMMISSIONER GILBERTSON added that factoring in lease cost as a companion to either purchase of equipment or capital - it's the same - whether leasing for something of a net present value of \$1 million, or purchasing that equipment; that would be treated fairly and equally. That is a change.

SENATOR WILKEN clarified that under current law, if there is a purchase, it becomes an asset. That is calculated in the CON. If one takes this same equipment space and leases it under current law, that instrument is transparent in the CON consideration.

COMMISSIONER GILBERTSON confirmed this was correct.

SENATOR GREEN asked if this would make it so that an applicant would get to \$1 million faster; would it count differently?

COMMISSIONER GILBERTSON responded that the rate has changed in this language. The net present value issue is already addressed in the bill, but this clarifies it. That is the greatest change,

and it would get one closer to the \$1 million threshold if the current proposal is to lease the equipment as opposed to purchasing it. Counting that lease as part of the overall cost of the project - if the remainder of the project is below \$1 million but also has a lease - if that lease was counted through its net present value with the capital construction, would get one over \$1 million. Theoretically that could move one closer to being subjected to CON requirements. In all practicality, this looks at single transactions and where they currently could be exempt from CON. Because of being handled through the lease arrangement, they would now go through CON as would a purchase of that equipment or that capital space.

SENATOR GREEN wondered if compared to the way it is done today, this could conceivably get one to the \$1 million more quickly.

COMMISSIONER GILBERTSON replied it wouldn't be quicker but it would enable transactions that currently would not be under CON, those done through a lease arrangement, to be treated in the same manner that a purchase transaction would be treated.

MR. GEORGE LARSON, CEO, Valley Hospital, said what was being grappled with was that under the current CON, there are capitalized leases that fall under the CON right now. The operating leases do not. This amendment pulls the operating lease into the CON process. It has been a loophole that many people, hospitals and non-hospitals have been using to get by the CON process.

SENATOR GREEN asked Chair Dyson if he had an opinion about this.

CHAIR DYSON replied that one way to accomplish what is desired is to take out the words, "leased equipment" because that leads back to facilities, leaving what the Commissioner is after, which is the nursing homes and adolescent treatment centers. It would leave the diagnostic centers still having to count a lease for property, and facilities counted as net present worth, and would exclude leases for equipment, which would work as an operating expense.

SENATOR GREEN said she probably agree. It looks like there's been a dollar amount in statute since the mid-80s, and this essentially lowers or changes that calculation. She commented that any new participant coming in or applying for a CON gets past \$1 million more quickly, while she prefers to go the other direction. She said she is comfortable with this language if the dollar amount could be changed on the other side.

CHAIR DYSON replied he was making an argument that the deputy commissioner made to him which was "the portion that the department wants to get - feels strongly a need to get in the planning process now - are these new nursing beds, and the adolescent treatment centers," and they are adding relatively small capital costs to do their projects. If that is raised too much, it allows much bigger nursing homes or adolescent treatment centers to be built. It's important to be careful of raising the limit. He said his suggestion of just taking the equipment out of this, taking the leasing of equipment out of the formula, doesn't hurt what the commissioner wants to do with the adolescent treatment centers or nursing homes, and still leaves the diagnostic centers with being able to lease equipment and stay below the \$1 million threshold on facilities. He acknowledged heads nodding in the audience, and noted that there will be a strong argument from the hospital community against this.

SENATOR GREEN asked if the same exclusion for equipment applies to a hospital, in the quest to get new equipment.

CHAIR DYSON said he thought so, and that Senator Guess's new paragraph is transparent as to whether it's for a hospital or a diagnostic center or anything else. "So if you want to take the equipment piece out of hers, I think you would accomplish what you're interested in."

SENATOR GUESS said she could not support taking "lease equipment" out because it will tilt the business economy. She asked why, in that situation, would one purchase anything? This builds a false economy and moves everyone into leasing instead of purchasing, and causes more problems. She said from a perspective of good policy, she's not sure why one would say, "Purchasing is o.k. if equipment goes under this, but leasing goes under that."

SENATOR GREEN commented that she couldn't support something that reduces the \$1 million when she would expand it, not so that it harms what the commissioner wants. Maybe there is some way to make a separate category that increases equipment only.

CHAIR DYSON asked Commissioner Gilbertson if he had any suggestions as to how to do this with the least damage.

COMMISSIONER GILBERTSON said this amendment in no way decreases the CON threshold for equipment purchases or any other purchase.

It clarifies that whether through a lease or a purchase, a set transaction will be subject to CON. It clarifies equal treatment of either transaction. In neither case does it reduce the \$1 million amount.

CHAIR DYSON said this may be true but it closes what one would consider to be a loophole where people have been avoiding the threshold by going to lease instead of purchase. Senator Green is saying with that loophole closed, the threshold is lowered.

COMMISSIONER GILBERTSON said it would lead to transactions currently structured to avoid CON having to go through the CON process like those who follow the business model that was expected for those transactions. It does not lower the CON threshold, it just makes sure that there is fair treatment of each transaction. He said he respectfully disagreed.

CHAIR DYSON said he didn't want to raise the threshold for the CON limit for adolescent treatment and nursing homes because he was persuaded by Commissioner Gilbertson's argument. He asked how Senator Green could raise the threshold for the equipment portion of diagnostic imaging and testing equipment without doing damage to the \$1 million facilities threshold.

COMMISSIONER GILBERTSON acknowledged he was put in an unusual position, as the \$1 million threshold is as important and viable as the \$1 million for either capital or equipment; they are both appropriate dollar amounts. The committee probably doesn't want to debate the entire CON process or policy. It is certainly within the Legislature's purview to set a different dollar threshold for various types of health care purchases. The department and administration position is that the \$1 million threshold is appropriate and does benefit the health care system, not just in the case of facilities and capital, but also for equipment.

SENATOR GUESS stated she doesn't think it's about how "expenditure" is defined; regarding the amendment, she suggested re-vamping AS 18.07.031.

SENATOR GREEN asked for clarification.

SENATOR GUESS said, "I don't think this amendment has anything to do with the way you guys are talking about it, I was just trying to say it nicely."

SENATOR GREEN said she wanted to be sure that this didn't artificially change something, acknowledging that it does count more things.

CHAIR DYSON asked if the objection to Amendment 4 was maintained. [It was not.] Seeing and hearing no objection, Amendment 4 was adopted.

5:50 p.m.

SENATOR GREEN said she was not sure what to do regarding entering the language and the change. She said she appreciates the dilemma regarding paying for an unlimited numbers of beds. She stated there is a disparity between a new entity and an established metropolis on a hospital campus, and thinks that essentially things are being kept from happening versus being allowed to happen, and that bothers her.

CHAIR DYSON said one option is on page [4, line 17] to take out the phrase, "independent diagnostic testing facility," as then they're outside of the CON process, and that still addresses [Commissioner Gilbertson's] concerns. This may result in there being more diagnostic centers, which could be looked at as providing services that are not now available in some communities, or of robbing some hospitals of a significant part of their financial base.

COMMISSIONER GILBERTSON said, as a point of clarification, he's heard it said that the department's sole interest is in the RPTC [residential psychiatric treatment center] language. He wanted to clarify for members that the administration and department are not interested only in that portion of this legislation, but support the entire bill and believe the imaging provisions are key, just as other provisions in the bill, to ensuring that there is (indisc.) in process.

The committee took an at-ease.

6:25 p.m.

CHAIR DYSON re-stated that there was no objection and that Amendment 4 was officially adopted. He asked for the will of the committee.

SENATOR DAVIS moved to report [SCS CSHB 511 (HES)] out of committee with individual recommendations and attached fiscal notes.

CHAIR DYSON asked if there was any objection. Seeing and hearing none, it was so ordered.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at 6:28 p.m.