

HOUSE BILL NO. 214

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIDSON, Kubina, Koponen, C.Davis, Taylor, Gonzales

Introduced: 3/13/91

Referred: Health, Education & Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state aid for nonprofit health facilities; and providing for an effective
2 date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 18.25 is amended by adding new sections to read:

5 Sec. 18.25.011. GRANT APPLICATIONS. (a) On or before June 15, a municipality
6 or a nonprofit organization may submit a grant application to the department for a nonprofit
7 health facility construction grant.

8 (b) A project for which a certificate of need is required under AS 18.07.031 - 18.07.111
9 at the time of the grant application is not eligible for a grant under AS 18.25.011 - 18.25.035
10 unless a certificate has been issued to the health facility that is the subject of the application, and
11 the certificate is in effect at the time of the application.

12 (c) A project is not eligible for a grant under AS 18.25.011 - 18.25.035 unless the
13 applicant has submitted a five-year master plan for the construction of the health facility on or
14 before September 1 of the fiscal year in which the application is submitted; the master plan must

1 include a description of the applicant's fixed asset inventory system and preventive maintenance
2 program, a detailed scope of work, an estimated project budget, an operation, maintenance, and
3 financial feasibility study, and a documentation of the conditions justifying the project, including
4 a signed statement by an architect or engineer verifying any code violation documented in the
5 plan.

6 (d) The grant application must include

7 (1) evidence that the applicant has secured and will maintain adequate property
8 loss insurance for the replacement cost of the health facility or a program of insurance acceptable
9 to the department; and

10 (2) evidence acceptable to the department that the proposed project is a capital
11 construction project and not part of a preventive maintenance program or regular custodial care
12 program.

13 Sec. 18.25.013. HEALTH FACILITIES REVIEW BOARD ESTABLISHED. (a) There
14 is created in the Department of Health and Social Services the Health Facilities Review Board
15 composed of seven members consisting of the following persons appointed by the governor and
16 who serve at the pleasure of the governor:

17 (1) an architect licensed under AS 08.48;

18 (2) an engineer licensed under AS 08.48;

19 (3) a representative nominated by the Alaska Municipal League;

20 (4) a representative from the department;

21 (5) a representative of a nonprofit health facility;

22 (6) a representative of the Alaska Area Native Health Service; and

23 (7) a member of the general public.

24 (b) The members serve for staggered terms of three years.

25 (c) The members of the board shall elect a member of the board as chair.

26 (d) The board shall hold at least one meeting each year. The board may hold additional
27 meetings at the call of the chair or of a majority of the board members.

28 Sec. 18.25.015. BOARD DUTIES. (a) The board shall annually

29 (1) review the master plans submitted by applicants under AS 18.25.011;

30 (2) with regard to the plans reviewed under (1) of this subsection, establish and
31 transmit to the department a revised and updated five-year construction grant schedule that

1 establishes the priorities among the proposed health facility construction projects and serves the
2 best interest of the state and the municipality or area in which the health facility is located.

3 (b) The board shall establish by regulation its criteria for establishing the priorities under
4 (a) of this section. The criteria must include at least the following factors:

5 (1) the degree of threat to the health or safety of facility occupants;

6 (2) the degree of potential harm to building integrity as it affects the building's
7 ability to support health care functions in a cost effective and efficient manner;

8 (3) the ability of the project or project phase to be self-supporting;

9 (4) access to other sources of funding;

10 (5) the overall capital requirements and operating cost efficiency over the lifetime
11 of the facility;

12 (6) the community or area need for the facility as compared to alternative means
13 for providing the care;

14 (7) the level of care required to provide basic cost effective and efficient health
15 services;

16 (8) the effect of the grant award on the overall position of the applicant as
17 compared to health facilities that are not eligible to receive grants under AS 18.25.011 -
18 18.25.035.

19 (c) The board may reject a grant application and omit it from the construction grant
20 schedule if

21 (1) the applicant provides incomplete information or documentation on the project;

22 (2) the board determines that existing facilities can adequately serve the program
23 requirements, or that an alternative project is in the best interests of the state; or

24 (3) the board determines that the project is not in the best interests of the state
25 or the municipality or area in which the health facility is located.

26 Sec. 18.25.017. DEPARTMENT ACTION. (a) Before a grant application is submitted
27 to the board, the department shall verify the amounts and reasons for the items in the budget for
28 each grant application.

29 (b) With regard to the construction grant schedule established by the board under
30 AS 18.25.015, the department shall transmit the construction grant schedule, including the
31 budgets verified under (a) of this section, to the governor by October 15 of each year and to the

1 legislature within the first 10 days of each regular legislative session.

2 Sec. 18.25.019. PUBLIC NOTICE AND HEARING. On or before July 15 of each year,
3 the department shall provide public notice of the grant applications made under AS 18.25.011
4 and the priorities established under AS 18.25.015. After public notice has been given, the
5 department shall, not later than August 15 of each year, hold a public hearing on the priorities
6 established under AS 18.25.015. In this subsection, "public notice" means notice published in
7 a newspaper of general circulation and notice to each person who has requested notice about the
8 grant requests from the department.

9 Sec. 18.25.021. AWARD. (a) The department shall award grants in the order of the
10 projects' priorities on the date the appropriation bill funding the nonprofit health facility
11 construction grant fund becomes law, regardless of an administrative or judicial review pending
12 under AS 18.25.023. An administrative or judicial review pending under AS 18.25.023 at the
13 time that grants are awarded may not delay the funding of grants.

14 (b) If a project is assigned a new priority ranking under AS 18.25.023 after the date the
15 appropriation bill for the nonprofit health facility construction grant fund becomes law, a grant
16 shall be awarded for the project in accordance with the new priority ranking at the next time that
17 nonprofit health facility construction grants are awarded under AS 18.25.011 - 18.25.035.

18 Sec. 18.25.023. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) An applicant
19 under AS 18.25.011 may not request reconsideration of a decision of the board unless the request
20 is based on reasonable issues of fact or law. The request must be in writing and include a
21 statement of the specific changes desired, and a summary of the evidence supporting the
22 applicant's claim that the board has erred in its review of the applicant's grant application. A
23 request for reconsideration must be submitted to the board by the first day of the public hearing
24 held under AS 18.25.019. The board shall review its decision on the basis of the request by the
25 applicant and determine whether its decision should be changed. The board shall issue its
26 determination in writing within 15 days after the last day of the public hearing held under
27 AS 18.25.019.

28 (b) An applicant under AS 18.25.011 may appeal an adverse decision of the board under
29 (a) of this section by filing a written notice of appeal with the commissioner within 15 days after
30 the date of the board's decision. The notice of appeal must state the legal and factual basis for
31 the appeal and the precise relief sought. The failure of the applicant to include an issue in a

1 notice of appeal constitutes a waiver of the right to have the issue considered. Not later than 10
2 days after receipt of a notice of appeal, the commissioner shall appoint a hearing officer who is
3 qualified under AS 44.62.350(c) to consider the appeal. If the hearing officer finds that the
4 notice of appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue
5 a written decision denying the appeal. Denial of an appeal by a hearing officer is a final decision
6 that may be appealed under (d) of this section. If the hearing officer finds that the notice of
7 appeal raises a reasonable issue of fact or law, the hearing officer shall conduct a hearing on
8 those issues and recommend a decision to the board. The hearing officer shall issue a decision
9 on the appeal not later than 60 days after being appointed. The commissioner shall consider the
10 recommended decision of the hearing officer within 10 days after receipt and may adopt all, part,
11 or none of the recommended decision or may remand the issue to the hearing officer for further
12 hearings. The commissioner shall issue a decision in writing within 10 days after consideration
13 of the hearing officer's decision.

14 (c) The hearing officer may consolidate appeals under (b) of this section if the notices
15 of appeal raise related issues of fact or law.

16 (d) An applicant under AS 18.25.011 may appeal an adverse decision of a hearing officer
17 or the board under (b) of this section to the superior court in the manner provided by
18 AS 44.62.560 - 44.62.570 and the Alaska Rules of Appellate Procedure.

19 (e) The board shall adopt regulations governing procedures for the reconsideration and
20 appeal of decisions under (a) - (c) of this section. The regulations adopted under this subsection
21 are not required to conform to AS 44.62.330 - 44.62.630, but must be consistent with minimum
22 standards of due process.

23 (f) An applicant under AS 18.25.011 may not request reconsideration of or appeal a
24 priority determination on the grounds that a revised priority assigned to another project, due to
25 a reconsideration or appeal under this section, has resulted in a lower priority being accorded to
26 the applicant's project.

27 Sec. 18.25.025. GRANT AGREEMENT AND CONDITIONS. (a) The department shall
28 enter into a written agreement with the grantee before it distributes grant funds under
29 AS 18.25.011 - 18.25.035.

30 (b) The department shall require in the grant agreement that the grantee

31 (1) agree to construction of the health facility as described by the certificate of

- 1 need, if any, issued to the facility under AS 18.07.031 - 18.07.111;
- 2 (2) provide reasonable assurance by a means acceptable to the department that
3 the cost of the project will be uniform with the costs of the most current construction projects
4 in the area;
- 5 (3) agree to submit to the department for department approval a description and
6 justification of a cost overrun before the grantee agrees to pay for the overrun and before the
7 department distributes money to the grantee to pay for the overrun;
- 8 (4) agree to place the grant funds in an interest-bearing account and not to use
9 the interest or the grant funds for a purpose other than the project;
- 10 (5) agree to limit equipment purchases to that required for the facility operation;
- 11 (6) submit project budgets for department review and agree that the grant amount
12 may, at the discretion of the department, be reduced or increased by amounts equal to the
13 amounts by which contracts vary from the budget amounts approved by the department;
- 14 (7) submit to the department for approval, before advertising for bids for the
15 construction contract, a plan for construction that includes specifications, final construction
16 drawings, and proposed contract documents;
- 17 (8) submit for department review a tabulation of all bids received, a complete
18 copy of the lowest bid, a copy of the proposed notice to proceed with construction, and a copy
19 of the proposed construction contract;
- 20 (9) submit for department review and acceptance documentary evidence that the
21 project is being accomplished in accordance with all the assertions in the grantee's five-year
22 master plan and grant application;
- 23 (10) submit sufficient assurances that the project will be used for the stated
24 purposes of the grant for the expected useful lifetime of the facility;
- 25 (11) agree to conform to all applicable governmental codes and standards,
26 including the most recently adopted state statutes and regulations on building, health, mechanical,
27 electrical, fire, safety, and handicap accessibility, and those covering the planning, construction,
28 and operation of the health facility;
- 29 (12) agree to comply with
- 30 (A) the department's single audit requirements;
- 31 (B) AS 37.05.321, prohibiting the use of grant funds and earnings to

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influence legislative action;

(C) the reporting requirements of AS 36.05 and AS 36.10; and

(D) 42 U.S.C. 2000a - 2000h-6 (Civil Rights Act of 1964), 29 U.S.C. 621-634 (Age Discrimination in Employment Act of 1967), 7 U.S.C. 2027 (Food Stamp Act of 1977), and the department's requirements for implementation of the federal statutes listed in this subparagraph;

(13) identify anticipated operating costs and revenue and the sources of funding that may be requested if costs exceed projected revenue;

(14) complete the project in a timely manner to a fully functional condition and submit periodic status reports not less than every six months to the department detailing work completed to date, a summary of expenditures compared with the approved budget, and an explanation of any deviation from the approved work, schedule, or budget; and

(15) agree to comply with other requirements that the department, notwithstanding AS 37.05.318, may reasonably impose on grantees and that are necessary to meet the intent of the grant.

(c) Except as provided under (b) or (d) of this section, a cost of construction for a health facility may be paid under a grant awarded under AS 18.25.021 without regard to whether the cost was incurred before the

(1) award of the grant; or

(2) effective date of an appropriation to the nonprofit health facility construction grant fund for the year in which the grant is funded.

(d) The maximum percentage of the costs of planning and designing, including engineering, that are incurred before awarding a grant and that may be paid under the grant may not exceed 15 percent.

(e) The fair market value of land acquisition and site preparation may be included in the grantee's share of the total cost of the health facility. The fair market value shall be determined as of the date when the grant application is submitted under AS 18.25.011.

(f) The direct expenses of the grantee to administer the project may not exceed 10 percent of the grant.

Sec. 18.25.027. GRANT APPROPRIATIONS. Within the general appropriation bill submitted to the legislature under AS 37.07.020, the governor shall include an appropriation for

1 nonprofit health facility construction grants in the succeeding fiscal year as determined by the
2 priority list and budgets transmitted to the governor under AS 18.25.017.

3 Sec. 18.25.029. AMOUNT OF GRANTS. For each project included in a grant awarded
4 under AS 18.25.021, the state shall pay 80 percent of the total costs of construction incurred for
5 the project by the grantee during the fiscal year for which the grant is made.

6 Sec. 18.25.031. DISTRIBUTION OF GRANT. After the effective date of the agreement
7 for a grant under AS 18.25.011 - 18.25.035, the department shall advance 20 percent of the grant
8 to the grantee. The department shall base subsequent payments from the grant on payment
9 requests submitted by the grantee for the costs of construction incurred by the grantee for the
10 grant project. The department may not make a further payment under the grant until the grantee
11 has exhausted the advance.

12 Sec. 18.25.033. NONPROFIT HEALTH FACILITY CONSTRUCTION GRANT FUND.
13 The nonprofit health facility construction grant fund is created as an account in the general fund.
14 The fund shall be used to make grants under AS 18.25.011 - 18.25.035 for the costs of
15 construction of nonprofit health facilities. Legislative appropriations under AS 18.25.011 -
16 18.25.035 for the costs of construction of nonprofit health facilities shall be deposited in the fund.

17 Sec. 18.25.035. DEFINITIONS. In AS 18.25.011 - 18.25.035,

18 (1) "board" means the Health Facilities Review Board;

19 (2) "costs of construction" means the cost of acquiring, constructing, enlarging,
20 repairing, remodeling, equipping, or furnishing nonprofit health facilities and includes the total
21 of all costs of financing and carrying out the project, including

22 (A) the cost of necessary studies, surveys, plans and specifications,
23 architectural, engineering and other special services, the acquisition of real property, site
24 preparation and development, and the acquisition of machinery and equipment necessary
25 for the project;

26 (B) the direct expenses of the grantee to administer the project;

27 (C) the cost of financing the project, including interest on bonds issued
28 to finance the project; and

29 (D) the cost of other items, including indemnity and surety bonds and
30 premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial
31 advisors, and paying agents for the bonds issued;

1 (3) "health facility" means a nursing home or a facility that provides
2 hospitalization for inpatient medical and surgical care of acute illness or injury or obstetric care;

3 (4) "nonprofit" means qualified for an exemption under 26 U.S.C. 501 from
4 federal income tax.

5 * Sec. 2. AS 18.25.100 is repealed and reenacted to read:

6 Sec. 18.25.100. REGULATIONS. The department shall adopt regulations to implement
7 this chapter.

8 * Sec. 3. AS 46.11.900(7) is amended to read:

9 (7) "state financial assistance" means a loan, grant, guarantee, insurance, payment,
10 rebate, subsidy, or other form of state assistance other than aid under AS 05.35.010 - 05.35.070,
11 AS 14.11, AS 18.25.011 - 18.25.035, and AS 29.60, including the purchase by a state agency of
12 a loan to finance the construction or purchase of a residential building;

13 * Sec. 4. AS 18.25.010, 18.25.020, 18.25.030, 18.25.070, 18.25.080, 18.25.090, and 18.25.110 are
14 repealed.

15 * Sec. 5. This Act takes effect July 1, 1991.