

**SENATE BILL NO. 67**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY SENATORS JONES, Zharoff**

**Introduced: 1/21/91**

**Referred: HESS and 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 REQUESTS. (a) On or before June 15 of the fiscal year  
6 preceding the fiscal year for which the application is made, a municipality or a nonprofit  
7 organization may submit a grant application to the department for a nonprofit health facility  
8 construction grant.

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

13           (c) A project is not eligible for a grant under AS 18.25.011 - 18.25.035 unless the  
14 applicant has submitted a five-year master plan for the construction of the health facility on or

1 before September 1 of the fiscal year preceding the fiscal year in which the application is  
2 submitted; the master plan must include a description of the applicant's fixed asset inventory  
3 system and preventive maintenance program, a detailed scope of work, an estimated project  
4 budget, an operation, maintenance, and financial feasibility study, and a documentation of the  
5 conditions justifying the project, including a signed statement by an architect or engineer  
6 verifying any code violation documented in the plan.

7 (d) The grant application must include

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

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

14 Sec. 18.25.013. HEALTH FACILITIES REVIEW BOARD ESTABLISHED. (a) There  
15 is created in the Department of Health and Social Services the Health Facilities Review Board  
16 composed of seven members consisting of the following persons appointed by 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 nominated by the Alaska State Hospital and Nursing  
22 Association;

23 (6) a representative from the division of fire prevention in the Department of  
24 Public Safety; and

25 (7) a member of the general public.

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

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

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

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

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

1 (2) with regard to the plans reviewed under (1) of this subsection, establish and  
2 transmit to the department a revised and updated five-year construction grant schedule that  
3 establishes the priorities among the proposed health facility construction projects and serves the  
4 best interest of the state and the municipality or area in which the health facility is located.

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

- 7 (1) emergency requirements;  
8 (2) priorities assigned by the applicant to the projects requested; and  
9 (3) whether the project is needed to avert imminent danger or correct life-  
10 threatening situations.

11 (c) The board may reject a project request and omit it from the construction grant  
12 schedule if

- 13 (1) the applicant provides incomplete information or documentation on the project;  
14 (2) the board determines that existing facilities can adequately serve the program  
15 requirements, or that an alternative project is in the best interests of the state; or  
16 (3) the board determines that the project is not in the best interests of the state  
17 or the municipality or area in which the health facility is located.

18 Sec. 18.25.017. DEPARTMENT ACTION ON GRANT SCHEDULE. With regard to  
19 the construction grant schedule established by the board under AS 18.25.015, the department shall

20 (1) verify the amounts and reasons for the items in the budget for each grant  
21 request; and

22 (2) transmit the construction grant schedule and the budget verified under (1) of  
23 this section to the governor by October 15 of each year and to the legislature within the first 10  
24 days of each regular legislative session.

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

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

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

10          Sec. 18.25.023. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) An applicant  
11 under AS 18.25.011 may request reconsideration of a decision of the board assigning a priority  
12 to the applicant's project, establishing the scope of the project, or establishing the budget for the  
13 project. The request must be in writing and include a statement of the specific changes desired,  
14 and a summary of the evidence supporting the applicant's claim that the board has erred in its  
15 review of the applicant's grant application. A request for reconsideration must be submitted to  
16 the board by the first day of the public hearing held under AS 18.25.019. The board shall review  
17 its decision on the basis of the request by the applicant and determine whether its decision should  
18 be changed. The board shall issue its determination in writing within 15 days after the last day  
19 of the public hearing held under AS 18.25.019.

20          (b) An applicant under AS 18.25.011 may appeal an adverse decision of the board under  
21 (a) of this section by filing a written notice of appeal with the commissioner within 15 days after  
22 the date of the board's decision. The notice of appeal must state the legal and factual basis for  
23 the appeal and the precise relief sought. The failure of the applicant to include an issue in a  
24 notice of appeal constitutes a waiver of the right to have the issue considered. Not later than 10  
25 days after receipt of a notice of appeal, the commissioner shall appoint a hearing officer who is  
26 qualified under AS 44.62.350(c) to consider the appeal. If the hearing officer finds that the  
27 notice of appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue  
28 a written decision denying the appeal. Denial of an appeal by a hearing officer is a final decision  
29 that may be appealed under (d) of this section. If the hearing officer finds that the notice of  
30 appeal raises a reasonable issue of fact or law, the hearing officer shall conduct a hearing on  
31 those issues and recommend a decision to the board. The hearing officer shall issue a decision

1 on the appeal not later than 60 days after being appointed. The board shall consider the  
2 recommended decision of the hearing officer within 10 days after receipt and may adopt all, part,  
3 or none of the recommended decision or may remand the issue to the hearing officer for further  
4 hearings. The board shall issue its decision in writing within 10 days after consideration of the  
5 hearing officer's decision.

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

8 (d) An applicant under AS 18.25.011 may appeal an adverse decision of a hearing officer  
9 or the board under (b) of this section to the superior court in the manner provided by  
10 AS 44.62.560 - 44.62.570.

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

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

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

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

23 (1) agree to construction of the health facility as described by the certificate of  
24 need, if any, issued to the facility under AS 18.07.031 - 18.07.111;

25 (2) provide reasonable assurance by a means acceptable to the department that  
26 the cost of the project will be uniform with the costs of the most current construction projects  
27 in the area;

28 (3) agree to submit to the department for department approval a description and  
29 justification of a cost overrun before the grantee agrees to pay for the overrun and before the  
30 department distributes money to the grantee to pay for the overrun;

31 (4) agree to place the grant funds in an interest-bearing account and not to use

1 the interest or the grant funds for a purpose other than the project;

2 (5) agree to limit equipment purchases to that required for the construction plan;

3 (6) submit project budgets for department review and agree that the grant amount  
4 may, at the discretion of the department, be reduced or increased by amounts equal to the  
5 amounts by which contracts vary from the budget amounts approved by the department;

6 (7) submit to the department for approval, before advertising for bids for the  
7 construction contract, a plan for construction that includes specifications, final construction  
8 drawings, and proposed contract documents;

9 (8) submit for department review a tabulation of all bids received, a complete  
10 copy of the lowest bid, a copy of the proposed notice to proceed with construction, and a copy  
11 of the proposed construction contract;

12 (9) submit for department review and acceptance documentary evidence that the  
13 project is being accomplished in accordance with all the assertions in the grantee's five-year  
14 master plan and grant application;

15 (10) submit sufficient assurances that the project will be used for the stated  
16 purposes of the grant for not less than five years;

17 (11) agree to conform to all applicable governmental codes and standards,  
18 including the most recently adopted state statutes and regulations on building, health, mechanical,  
19 electrical, fire, safety, and handicap accessibility, and those covering the planning, construction,  
20 and operation of the health facility;

21 (12) agree to comply with

22 (A) the department's single audit requirements;

23 (B) AS 37.05.321, prohibiting the use of grant funds and earnings to  
24 influence legislative action;

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

26 (D) 42 U.S.C. 2000a - 2000h-6 (Civil Rights Act of 1964), 29 U.S.C. 621-  
27 634 (Age Discrimination in Employment Act of 1967), 7 U.S.C. 2027 (Food Stamp Act  
28 of 1977), and the department's requirements for implementation of the federal statutes  
29 listed in this subparagraph;

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

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

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

8 (c) Except as provided under (b) or (d) of this section, a cost of construction for a health  
9 facility may be paid under a grant awarded under AS 18 25.021 without regard to whether the  
10 cost was incurred before the

11 (1) award of the grant;

12 (2) approval of the grant application by the department; or

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

15 (d) The costs of planning and designing, including engineering, of a health facility may  
16 not be paid under a grant awarded under AS 18.25.021 if the cost is incurred more than 120 days  
17 before the award of the grant, except that the cost of land acquisition and site preparation may  
18 be included in the grantee's share of the total cost regardless of the date of the acquisition or site  
19 work.

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

22 Sec. 18.25.027. GRANT APPROPRIATIONS. Within the general appropriation bill  
23 submitted to the legislature under AS 37.07.020, the governor shall include an appropriation for  
24 nonprofit health facility construction grants in the succeeding fiscal year as determined by the  
25 priority list and budgets transmitted to the governor under AS 18.25.017.

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

29 Sec. 18.25.031. DISTRIBUTION OF GRANT. After the effective date of the agreement  
30 for a grant under AS 18.25.011 - 18.25.035, the department shall advance 20 percent of the grant  
31 to the grantee. The department shall base subsequent payments from the grant on payment

1 requests submitted by the grantee for the costs of construction incurred by the grantee for the  
2 grant project. The department may not make a further payment under the grant until the grantee  
3 has exhausted the advance.

4 **Sec. 18.25.033. NONPROFIT HEALTH FACILITY CONSTRUCTION GRANT FUND.**

5 The nonprofit health facility construction grant fund is created as an account in the general fund.  
6 The fund shall be used to make grants under AS 18.25.011 - 18.25.035 for the costs of  
7 construction of nonprofit health facilities. Legislative appropriations under AS 18.25.011 -  
8 18.25.035 for the costs of construction of nonprofit health facilities shall be deposited in the fund.

9 **Sec. 18.25.035. DEFINITIONS.** In AS 18.25.011 - 18.25.035,

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

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

14 (A) the cost of necessary studies, surveys, plans and specifications,  
15 architectural, engineering and other special services, the acquisition of real property, site  
16 preparation and development, and the acquisition of machinery and equipment necessary  
17 for the project;

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

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

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

24 (3) "health facility" means a nursing home or hospital;

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

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

28 **Sec. 18.25.100. REGULATIONS.** The department shall adopt regulations to implement  
29 this chapter.

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

31 (7) "state financial assistance" means a loan, grant, guarantee, insurance, payment,

1 rebate, subsidy, or other form of state assistance other than aid under AS 05.35.010 - 05.35.070,  
2 AS 14.11, AS 18.25.011 - 18.25.035, and AS 29.60, including the purchase by a state agency of  
3 a loan to finance the construction or purchase of a residential building;

4 \* 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  
5 repealed.

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