

HOUSE CS FOR CS FOR SENATE BILL NO. 67 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/21/91

Referred: Rules

Sponsor(s): SENATORS JONES, Zharoff, Menard, Hoffman

REPRESENTATIVE Taylor

A BILL

FOR AN ACT ENTITLED

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

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

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

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

11 (c) A project is not eligible for a grant under AS 18.25.011 - 18.25.035 unless the
12 applicant has submitted a five-year master plan for the construction of the health facility on or
13 before September 1 of the fiscal year in which the application is submitted; the master plan must
14 include a description of the applicant's fixed asset inventory system and preventive maintenance

1 program, a detailed scope of work, an estimated project budget, an operation, maintenance, and
2 financial feasibility study, and a documentation of the conditions justifying the project, including
3 a signed statement by an architect or engineer verifying any code violation documented in the
4 plan.

5 (d) The grant application must include

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

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

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

16 (1) an architect licensed under AS 08.48;

17 (2) an engineer licensed under AS 08.48;

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

19 (4) a representative from the department;

20 (5) a representative of a health facility;

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

22 (7) a representative of the office of management and budget in the Office of the

23 Governor.

24 (b) To the extent possible and except for the board members described under (a)(4) and
25 (7) of this section, the board members must be representative of all areas of the state.

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

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

28 (e) 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 primary criteria for establishing the priorities under (a) of this section are

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

7 (2) the degree of potential harm to building integrity as it affects the building's
8 ability to support health care functions in a cost-effective manner.

9 (c) The board shall establish by regulation additional criteria for establishing the priorities
10 under (a) of this section. The criteria must include at least the following factors:

11 (1) the ability of the project or project phase to be self-supporting;

12 (2) access to other sources of funding, including funding from the parent
13 corporation of the health facility, if applicable;

14 (3) the overall capital requirements and operating cost efficiency over the lifetime
15 of the facility;

16 (4) the community or area need for the facility as compared to alternative means
17 for providing the care;

18 (5) the level of care required to provide basic cost effective and efficient health
19 services;

20 (6) the effect of the grant award on the overall position of the applicant as
21 compared to health facilities that are not eligible to receive grants under AS 18.25.011 -
22 18.25.035.

23 (d) The board may reject a grant application and omit it from the construction grant
24 schedule if

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

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

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

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

1 each grant application.

2 (b) With regard to the construction grant schedule established by the board under
3 AS 18.25.015, the department shall transmit the construction grant schedule, including the
4 budgets verified under (a) of this section, to the governor by October 15 of each year and to the
5 legislature within the first 10 days of each regular legislative session.

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

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

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

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

1 (b) An applicant under AS 18.25.011 may appeal an adverse decision of the board under
2 (a) of this section by filing a written notice of appeal with the commissioner within 15 days after
3 the date of the board's decision. The notice of appeal must state the legal and factual basis for
4 the appeal and the precise relief sought. The failure of the applicant to include an issue in a
5 notice of appeal constitutes a waiver of the right to have the issue considered. Not later than 10
6 days after receipt of a notice of appeal, the commissioner shall appoint a hearing officer who is
7 qualified under AS 44.62.350(c) to consider the appeal. If the hearing officer finds that the
8 notice of appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue
9 a written decision denying the appeal. Denial of an appeal by a hearing officer is a final decision
10 that may be appealed under (d) of this section. If the hearing officer finds that the notice of
11 appeal raises a reasonable issue of fact or law, the hearing officer shall conduct a hearing on
12 those issues and recommend a decision to the commissioner. The hearing officer shall issue a
13 decision on the appeal not later than 60 days after being appointed. The commissioner shall
14 consider the recommended decision of the hearing officer within 10 days after receipt and may
15 adopt all, part, or none of the recommended decision or may remand the issue to the hearing
16 officer for further hearings. The commissioner shall issue a decision in writing within 10 days
17 after consideration of the hearing officer's decision.

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

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

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

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

31 Sec. 18.25.025. GRANT AGREEMENT AND CONDITIONS. (a) The department shall

1 enter into a written agreement with the grantee before it distributes grant funds under
2 AS 18.25.011 - 18.25.035.

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

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

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

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

12 (4) agree to place the grant funds in an interest-bearing account and not to use
13 the interest or the grant funds for a purpose other than the project;

14 (5) agree to limit equipment purchases to that required for the facility operation;

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

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

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

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

27 (10) submit sufficient assurances that the project will be used for the stated
28 purposes of the grant for the expected useful lifetime of the facility;

29 (11) agree to conform to all applicable governmental codes and standards,
30 including the most recently adopted state statutes and regulations on building, health, mechanical,
31 electrical, fire, safety, and handicap accessibility, and those covering the planning, construction,

1 and operation of the health facility;

2 (12) agree to comply with

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

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

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

7 (D) 42 U.S.C. 2000a - 2000h-6 (Civil Rights Act of 1964), 29 U.S.C. 621-
8 634 (Age Discrimination in Employment Act of 1967), 7 U.S.C. 2027 (Food Stamp Act
9 of 1977), and the department's requirements for implementation of the federal statutes
10 listed in this subparagraph;

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

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

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

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

23 (1) award of the grant; or

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

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

29 (e) The grantee may not satisfy more than five percent of the grantee's share of the total
30 cost of the health facility with items other than cash.

31 (f) Except as limited by (e) of this section, the fair market value of land acquisition and

1 site preparation may be included in the grantee's share of the total cost of the health facility.
2 The fair market value shall be determined as of the date when the grant application is submitted
3 under AS 18.25.011.

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

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

10 Sec. 18.25.029. AMOUNT OF GRANTS. For each project included in a grant awarded
11 under AS 18.25.021, the state shall pay 75 percent of the total costs of construction incurred for
12 the project by the grantee during the fiscal year for which the grant is made.

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

19 Sec. 18.25.033. HEALTH FACILITY CONSTRUCTION GRANT FUND. The health
20 facility construction grant fund is created as an account in the general fund. The fund shall be
21 used to make grants under AS 18.25.011 - 18.25.035 for the costs of construction of health
22 facilities. Legislative appropriations under AS 18.25.011 - 18.25.035 for the costs of construction
23 of health facilities shall be deposited in the fund.

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

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

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

29 (A) the cost of necessary studies, surveys, plans and specifications,
30 architectural, engineering and other special services, the acquisition of real property, site
31 preparation and development, and the acquisition of machinery and equipment necessary

- 1 for the project;
- 2 (B) the direct expenses of the grantee to administer the project;
- 3 (C) the cost of financing the project, including interest on bonds issued
4 to finance the project; and
- 5 (D) the cost of other items, including indemnity and surety bonds and
6 premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial
7 advisors, and paying agents for the bonds issued;
- 8 (3) "health facility" means a nursing home or a facility that provides
9 hospitalization for inpatient medical and surgical care of acute illness or injury or obstetric care,
10 but does not include a nursing home or facility that has more than 200 beds.
- 11 * Sec. 2. AS 18.25.035(3) is repealed and reenacted to read:
- 12 (3) "health facility" means a nursing home or a facility that provides
13 hospitalization for inpatient medical and surgical care of acute illness or injury or obstetric care.
- 14 * Sec. 3. AS 18.25.100 is repealed and reenacted to read:
- 15 Sec. 18.25.100. REGULATIONS. The department shall adopt regulations to implement
16 this chapter.
- 17 * Sec. 4. AS 46.11.900(7) is amended to read:
- 18 (7) "state financial assistance" means a loan, grant, guarantee, insurance, payment,
19 rebate, subsidy, or other form of state assistance other than aid under AS 05.35.010 - 05.35.070,
20 AS 14.11, AS 18.25.011 - 18.25.035, and AS 29.60, including the purchase by a state agency of
21 a loan to finance the construction or purchase of a residential building;
- 22 * Sec. 5. AS 18.25.010, 18.25.020, 18.25.030, 18.25.070, 18.25.080, 18.25.090, and 18.25.110 are
23 repealed.
- 24 * Sec. 6. Section 2 of this Act takes effect July 1, 1996.
- 25 * Sec. 7. Except as provided in sec. 6, this Act takes effect July 1, 1991.