

HB

917

COMMITTEE REPORT

5/5/78

HOUSE

FURTHER: _____

Date: _____

Mr. Speaker:

The Committee on HESS has had HD 917

"An Act relating to an Alaska Medical Facility Authority; e.d."

under consideration and (a majority of the committee) (the committee reports it back as follows)

- recommends it do pass recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____
- and _____ new title same title
- AND attaches a Letter of Intent New Fiscal Note
- reports it back without recommendation
- and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

(Handwritten signature)

Chairman

LA21 3584 18.26 05/16/78 JA01 0002 07.24 05/17/78

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO ALL MEMBERS - HOUSE:

REQUEST YOUR FAVORABLE VOTE WEDNESDAY, CSHB 917, WHICH WILL
MEAN LOWER HOSPITAL COSTS TO CITIZENS OF OUR STATE. THE
STATE'S FINANCIAL CONSULTANT AGREES THIS IS THE MOST VIABLE
WAY TO FINANCE HOSPITAL CONSTRUCTION AT NO COST TO STATE.
PRESENT CERTIFICATE OF NEED LAW WILL PREVENT OVERBUILDING
AND COMMISSION CREATED BY CSHB 917 TIES INTO STATE HEALTH
AUTHORITY. THIS LEGISLATION WILL SAVE THE PATIENTS AT FAIRBANKS
MEMORIAL HOSPITAL MILLIONS OF DOLLARS IN HOSPITAL BILLS
OVER THE NEXT SEVERAL YEARS. THIS LEGISLATION IS NEEDED NOW.
THANKS FOR YOUR SUPPORT.

RON HERLAND
CHAIRMAN, FAIRBANKS COMMUNITY HOSPITAL FOUNDATION

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. /A/ EOM

SECTIONAL ANALYSIS: HB 917

Sterling Gallagher
Commissioner of Revenue

The Alaska Medical Facility Authority is designed to aid in the construction and equipping of established and potential medical facilities through financing in the municipal bond market. Similar financial assistance is available to municipalities that wish to expand medical services via medical facilities through the Municipal Bond Bank. This bill provides an additional means of financing to those profit or non profit medical entities which are not municipally owned or eligible for participation in the Municipal Bond Bank. Section 103 of the Internal Revenue Code permits tax exempt financing for these purposes.

18.26.010. The Legislative finding and policy section is necessary to establish the public purpose under which medical facilities can be financed in the municipal market. The Legislative findings are that there are inadequate medical facilities in certain localities. One of the policies is to provide alternative methods of financing and assistance in obtaining financing for the purpose of building or upgrading medical facilities in those localities.

18.26.020. Creation of the authority as a public corporation and instrumentality of the state within the Department of Revenue, but with a separate and independent legal existence.

18.26.030. Establishes the Commissioner of Revenue as chairperson of the Board of Directors, and the Commissioner of Community and Regional Affairs and Commissioner of Health and Social Services as the other two members of the Board.

18.26.040. This section establishes a quorum of two for the Board to function and states that members will serve without salary and that they may hire an Executive Director. Notice of meetings must be given in accordance with regulations adopted by the board and all meetings must be open to the public.

18.26.050. The powers of the authority are set forth in this section. They are comparable to those of similar bodies created in the state.

18.26.060. This section states that the Authority may not maintain or operate any medical facility except as provided in a trust indenture under default.

18.26.070. All expenses incurred by the authority are the sole obligations of the authority and no liability will accrue to the state.

18.26.080. The authority may borrow money and issue revenue bonds after the Board finds by resolution that the operator of the medical facility is financially competent to operate the facility and to retire the debt. Also a resolution may be passed establishing the public purpose of the particular facility and its projected cost. The bond resolution shall set out all the terms and conditions on the sale of the bonds. Bonds are negotiable instruments for purposes of the Uniform Commercial Code. The bond resolution must provide for the establishment of a special fund and may specify contractual terms. The superior court has jurisdiction to hear and determine actions or proceedings relating to the authority.

18.26.090. The authority may issue Bond Anticipation Notes under terms and conditions set by resolution.

18.26.100. This section states that the bonds may be secured by trust agreements.

18.26.110. There is no personal liability for the members of the authority or the person executing the bonds.

18.26.120. All notes and bonds issued against any special funds are a valid claim against that fund.

18.26.130. No member of the board, advisory employees or consultants may vote on a resolution or influence any decision where she/he has a conflict of interest. If violated, monetary gain must be returned, and person may be fined and jailed.

18.26.140. Any pledge of revenue or assets by the authority is binding from the time the pledge is made against any party irrespective of the actual notice.

18.26.150. The revenue bonds issued by the authority are not either directly, indirectly or contingently obligations of the State; they are paid solely from the revenue of the authority.

18.26.160. The rights of bondholders to protect investments via court intervention is specifically established.

18.26.170. The authority may invest its funds in prudent investments as defined in AS 37.10, but may pay no higher price for the investments than the offering or market price.

18.26.180. The bonds are legal security for banks, trust companies, savings and loans and other fiduciaries.

18.26.190. The State of Alaska pledges that it will not alter or limit the rights vested in this authority with respect to outstanding obligations.

18.26.200. The authority shall keep accurate accounting and shall make a report each year to the Governor and the Legislature. The Governor may investigate the affairs of the authority, may examine the property and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to projects undertaken by the authority.

18.26.210. All medical facilities are subject to state requirements for public buildings and structures.

18.26.220. All facilities shall meet state licensing requirements and shall obtain a certificate of need before financing under this authority.

18.26.230. The bonds of the authority are exempt from all taxes except for gift, inheritance and estate taxes. However real and personal property that is leased to a third party is subject to all local taxes.

18.26.240. All earnings of the authority excess to its needs are the exclusive property of the state.

18.26.250. The authority is not a political subdivision of the state for purposes of AS 37.10, a municipal corporation for purposes of AS 29. or a state agency for purposes of AS 37.

18.26.970. Definition of terms.

HOUSE BILL 917

"An Act relating to an Alaska Medical Facility Authority."

Accessibility to adequate medical care is not available to all Alaskans due to the lack of certain medical facilities and the inadequacy of other medical structures throughout the State.

Planning surveys indicate a need for additional mental health centers, public health centers, facilities for the developmentally disabled, rehabilitation facilities and drug abuse and alcoholism treatment facilities. Architectural surveys of hospitals, nursing homes and intermediate care homes often indicate a need for modernization or replacement of many of these facilities. As the population increases, additions to these facilities may be needed. Many of Alaska's existing facilities do not meet Life Safety requirements and are not functionally designed to operate efficiently or to provide cost savings through such means as energy conservation.

The intent of House Bill 917 is to establish a means of financing the construction and equipping of medical facilities for which a community-based need has been demonstrated. By providing an economic mechanism to finance such facilities, efforts to contain spiraling health care costs could be enhanced. Both municipal, non-profit and profit-making entities are eligible to apply to the proposed Alaska Medical Facility Authority for funding, thus enabling all potential consumers of service to take advantage of the cost-savings realized through the financing mechanism.

As a part of its efforts to contain rising health care costs, the Department of Health and Social Services is naturally concerned about curbing the unnecessary proliferation of medical facilities. Section 18.26.220 stipulates that any medical facility assisted in any way by the proposed Medical Facility Authority would be subject to those licensure and determination of need provisions currently a part of the Alaska Statutes. Any additional requirements promulgated at a future date would also need to be satisfied before eligibility for application was granted. Even those facilities "grandfathered in" under special provision of AS 18.07 must meet the community-determination of need test before being eligible for funding from the proposed Medical Facility Authority. These provisions not only assist the State in guarding against the over-building of medical facilities, but ensure that those facilities utilizing this source of State support benefit from inclusion in the comprehensive State and regional planning process.

The establishment of an alternative financing mechanism for non-municipally owned medical facilities would assist communities in developing the services necessary to meet the health needs of their residents in the most cost-effective manner possible.

Recommended by: D. Sharon Osborne Date 4/19/78
D. Sharon Osborne, Coordinator
Office of Planning and Research

Approved by: Helen D. Beirne Date 4/19/78
Helen D. Beirne, Commissioner
Department of Health & Social Services

Attachment

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

April 18, 1978

MEMORANDUM

SUBJECT: Medical Facility Authorities (W.O. #25/R)

TO: The Honorable Lisa Rudd

FROM: Snarman Haley *SH*
Research Analyst

I spoke with Mary Alice Lightle, a finance specialist for the American Hospital Association head office in Chicago, about medical facility authorities in other states. She informed me that Alaska is one of only four states that do not already have such authorities. The other three are California, Hawaii, and Nevada. There are a few more states in which the authorities are not yet active.

The trend toward state medical facility authorities began in 1966 in Connecticut. In many states the authorities' jurisdiction includes educational facilities as well as health facilities. In a few states the industrial development bond act was amended to include health facilities. A uniform health and educational facilities authority act has been developed and adopted by several states, including South Dakota. A copy of the South Dakota statute is attached. A copy of the uniform act is in the mail to me, along with a membership list for the Council of State Health Facility Financing Authorities, and an information sheet listing all fifty states.

I expect you will have further questions on particular aspects of this subject, so please let me know your wishes.

SH:dh
Attachment

April 12, 1978

Representative Lisa Rudd, Chairman
 House Community and Regional Affairs
 Committee
 Pouch V
 Juneau, AK 99811

Dear Representative Rudd:

We the undersigned, representing varied public and private interests in our community, are in support of House Bill 917. This act, creating a bonding mechanism to provide additional alternatives to medical facilities for issuing bonds under a State authority, is a necessity in the Fairbanks area and in other areas throughout the State. This act would provide a mechanism for Fairbanks Memorial Hospital to finance its new addition and thus would save an approximate six million dollars in interest costs. We are extremely supportive of House Bill 917 and urge your committee to take immediate action on this bill.

NAME ADDRESS OCCUPATION

NAME	ADDRESS	OCCUPATION
1. Ruth Peterson	SR Box 30218 Fairbanks	College Educator
2. Kenneth A. Crowell	PO Box 5 Fairbanks	Public Relations Administrator
3. Carol Johnson	705 B Tanager Dr. U of A	Student
4. Maria Lindner	SR 40567 Fairbanks, Ak.	Homemaker
5. Dan Jones	105 ...	Homemaker
6. ...	615 ...	...
7. ...	3446 ...	...
8. ...	...	...
9. ...	1644 ...	...
10. ...	216 ...	...
11. ...	Box 5071 College, Ak. 99705	Retired Eng.
12. ...	4399 ...	Secretary
13. ...	415 ...	Electronic Tech.
14. ...	PO Box E College	Member
15. ...	SR 2011-1 Fairbanks	FEU
16. ...	SR 40460-C Fairbanks	R.N.
17. ...	SR 31077 Fairbanks	N.N.
18. ...	...	...
19. ...	...	...
20. ...	115 ...	Domestic Engineer
21. ...	SR 80907 College, AK	Medical Technologist
22. ...	102 ...	Teacher
23. ...	SR Box 20021	day care attendant
24. ...	3155 ...	Board Member - director
25. ...	420 ...	transportation

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NAME	ADDRESS	OCCUPATION
1. Ralph W. How	S.R. 70071 FBK.	Food Serv. MGR.
2. James Worthington	Box 60223 Ft. Wks	Dentist
3. Joan Minkov	4508 Dartmouth Rd.	Dentist
4. William H. King	1919 Harding	Physician
5. D.D. Fairbank	SR 20005	M.D.
6. Roger P. Harding	102 10 th ST FBK	MD
7. James Fitzgerald	SR Pox 31446 FBK	Physician
8. Bill Lee	2 CRAIG ST FBK	Business
9. Pat Gai	5195 D LOMAX ST	Business office
10. Lawrence	162 ALLEGHENY	MANAGER
11. Lawrence Pitt	5141 H. Koyak St Fairbanks	Business
12. Arthur Harder	104 B	
13. James Dumas	5755 P. St Fairbanks	Business
14. Mary Curran	P.O. Box 50011 Fairbanks	Medical Billing Clerk
15. Tom Mays	116 Craig Street	Hospital Administrator
16. Gerald W. G. G.	1000 Bluebell	X-RAY Tech
17.		
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NAME	ADDRESS	OCCUPATION
1. <u>Wm R. Wood</u>	<u>665 TENTH AVE.</u> <u>FAIRBANKS, AK, 99701</u>	<u>President (Emeritus) University of Alaska</u>
2. <u>D. Harold Wood</u>	<u>1020 Kellum</u>	<u>Merchant</u>
3. <u>John Wilton</u>	<u>1020 Kellum</u>	<u>Interior Manager</u>
4. <u>Paul O. Smith</u>	<u>4273 Birch Lane</u> ^{FBI}	<u>Public Health Officer</u>
5. <u>Ralph H. Hoop</u>	<u>2519 Park Ave</u>	<u>DAC</u>
6. <u>John Miller</u>	<u>6th - 11th 1112</u>	<u>Physician</u>
7. <u>David Bell</u>	<u>235 Farewell</u>	<u>Fairbanks Manager NEMACH.</u>
8. <u>James Russell</u>	<u>541 - 4th Flx</u>	<u>Therapist</u>
9. <u>Carl</u>	<u>425 Glacier</u>	<u>Attorney</u>
10. <u>Earl H. Beattie</u>	<u>Box 80108, Fbks 99708</u>	<u>Univ. of Alaska</u>
11. <u>Howard A. Bize</u>	<u>711 Kobuk 4/A Fbks</u>	<u>Univ. of Alaska</u>
12. <u>Cl. P. P. P.</u>	<u>SA Box 2057, Fbks</u>	<u>Ret. Alascom</u>
13. <u>Dale Jones</u>	<u>Box 529 Fbks</u>	<u>Auto Insurance</u>
14. <u>Charles Jones</u>	<u>P.O. Box 2735 Fbks</u>	<u>Hotel Day</u>
15. <u>Charles Lusk</u>	<u>Box 70332</u>	<u>Fairbanks - Rider</u>
16. <u>John K. K.</u>	<u>304 College Rd</u>	<u>Fbks - AK Bus.</u>
17. <u>John K. K.</u>	<u>Silver 10571 Flx</u>	<u>Consultant</u>
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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

May 15, 1978

SUBJECT: CSHB 917, establishing the Alaska Medical Facility Authority (W.O. #5518)

TO: Representative Charles H. Parr, Chairman
Health, Education and Social Services Committee

FROM: John B. Chenoweth, Legislative Counsel

You have asked for a response to two points of objection made with respect to CSHB 917 by Al Comosso, Administrator of Anchorage's Providence Hospital. Neither of the writer's objections, to my mind, asserts a valid point of opposition which is of constitutional dimension.

Mr. Comosso's telegram states that the committee substitute "is philosophically contrary to existing [state] conflict of interest legislation" in that it permits board members to benefit from decisions of the authority board merely after the disclosure of the interest. I'm not sure what objection of constitutional proportion is suggested. No constitutional provision mandates treatment of conflicts between public service and private interests in all matters involving state board or commission members in one particular fashion; no provision bars the identification of conflicting interests and the manner of their disposition. The means by which conflicts of interest are handled is, in this instance, for legislative determination; disposition may, but need not, follow the "philosophy" of existing legislation on the subject.

*

The second objection concerns AS 18.26.140, added in section 1 of the bill. That section establishes a priority for revenues pledged over subsequent claims arising in tort or contract:

Representative Charles H. Parr

May 15, 1978

Page 2

Sec. 18.26.140. PLEDGE OF REVENUES. Any pledge of revenue or other money, obligations, or assets by the authority is binding from the time the pledge is made as against any parties having subsequent claims in tort, contract, or otherwise, irrespective of whether those parties have actual notice of the prior pledge. The pledge must be noted in the board's minute book and is constructive notice to all parties. Neither the resolution nor other instrument by which a pledge is created need be otherwise recorded, nor is the filing of any financing statement under the Uniform Commercial Code or other law required to perfect the pledge. Revenue, rent, or other money, obligations, or assets so pledged and later received by the authority are immediately subject to the lien of the pledge without any physical delivery or further act.

The author of the telegram suggests that the section may violate art. 1, sec. 15 of the state constitution:

PROHIBITED STATE ACTION. No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate. (Emphasis added.)

It should be noted, at the outset, that pledge provisions comparable to AS 18.26.140 are common in legislation governing the manner of operation of facility financing authorities in Alaska (see, for example, AS 44.58.350, relating to the Alaska Municipal Bond Bank Authority; AS 44.61.110, relating to the Alaska Industrial Development Authority; AS 18.56.120, relating to the Alaska Housing Finance Corporation). By the terms of sec. 140, as in the comparable sections of the other acts, revenues pledged may be so encumbered only in furtherance of the corporate purposes of the respective authority.

The revenue pledge provision of sec. 140 interposes no constitutional objection founded upon impairment of contract under the state constitutional provision cited. As the section indicates, the pledge of revenue constitutes a lien against assets of the Authority with respect to the discharge of the underlying obligation (presumably a debt

obligation), thereby providing the creditor (if a debt obligation, the lender or bondholder) a measure of additional security in the assets of the authority which is superior as against all others, except, as with lien law generally, those who hold prior liens on the property. The lien, which is a pledge of revenue or other asset of the Authority, is, in this instance, material not to an obligation of the contract but rather to secure the enforcement of the repayment provisions of the contract, a feature characteristic of revenue bonding procedures involving no pledge of the full faith and credit of the issuing state or political subdivision.

It is well settled law, both in federal courts with respect to interpretation of the comparable federal provision (U.S. Constitution, Art. I, sec. 10) and in state courts with respect to comparable state constitutional provisions prohibiting impairment of contract, that a state, by legislative act, may provide for the alteration of remedies available to parties to enforcement of rights in contracts without interfering with the underlying obligations, rights, and interests. Generally, it is enough, in the final instance, if the remedy remaining after alteration is adequate and sufficient.

It is not true that AS 18.26.140 "permits the [proposed Alaska Medical Facility] Authority to not be financially responsible for breaches of contract or torts." What is provided is a general scheme of prioritization as among bondholders, general creditors and others who may bring claims against the Authority by which, whenever a pledge of revenue or other asset is given by the Authority in furtherance of its purposes and recorded in the manner required, constructive notice of the pledge of revenue is provided to all parties entering subsequent claims of the subordination of their rights in those same assets to the extent of the pledge. Given the public purpose for which the Authority is proposed and the need to protect the bondholders and all other creditors of the Authority, I have no doubt that determination of priorities in the manner provided in sec. 140 would be upheld against any claim founded upon alleged impairment of contract under Art. I, sec. 15 of the state constitution.

JBC:hjd

LEGISLATIVE REVIEW & RECOMMENDATIONS
OF THE LEGISLATIVE ADVISORY COMMITTEE
OF THE MUNICIPAL HEALTH COMMISSION

(Anchorage)

1. Bill number and topic: House Bill 917 - Alaska Medical Facility Authority.
2. What is the current status of the Bill? Presently in House Community and Regional Affairs with additional referral to House HESS.
What is the time frame for influencing the bill's outcome the this committee or commission? This legislative session.
3. What does the bill do? Provides for an organization in the state government that will function as a mechanism through which medical facilities (proposed or existing) can obtain financing.
4. Who does it affect? Existing and proposed medical facilities and state taxpayers.
5. How much does it cost? Unknown.
6. Is it directed to a specific geographic area? No.
7. Is it directed to a specific group? Yes.
Who? Owners and operators of existing and proposed medical facilities. How does it affect others? May affect the public through increased taxes.
8. What are its strengths? Alternative (public) mechanism for financing medical facilities.
9. What are its drawbacks, weaknesses? 1) Transfers to the State the responsibility of private medical facility to obtain funding. We question this use of public assets to enhance private enterprise.
2) Could be costly to the state taxpayers.
3) Is an added layer of bureaucracy.
4) The Board of Directors are appointed rather than elected.
5) Already have a state and federal legislation that addresses and provides two planning organizations that deal specifically with health facilities and programs. This legislation ignores those planning bodies.
6) May have adverse affects on the development of medical facilities.
10. Is the idea new? No.
Are there precedents? Yes.
Where: Federal Public Law.
11. How would this bill affect the Anchorage Health Services Plan? Would affect the Anchorage Health Services Plan adversely.
12. What is the Committee's recommendation? That HB 917 not become law for the following reasons:

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: April 25, 1978
TO: Lisa Rudd
FROM: The Legislative Advisory Committee of the
Municipal Health Commission
SUBJECT: House Bill 917

We attempted to send comments on House Bill 917 for the public hearing scheduled by your committee on Friday, April 21. Unfortunately, the public hearing was over before we were able to telex the information to you. We were informed by your legislative assistant that the committee would accept comments on House Bill 917 through mid week. Found attached is the Legislative Review and Recommendations we developed on House Bill 917. We hope your committee will consider our input before making any decisions on this bill.

- 1) It transfers to the State the responsibility of a private medical facility to obtain funding. We question this use of public assets to enhance private enterprise.
- 2) It creates an added layer of bureaucracy.
- 3) The Board of Directors are appointed rather than elected.
- 4) May be costly to the State taxpayers. Anytime a new office is established secretaries must be hired, phones installed, letterhead printed, public announcements made etc. An office to support the Medical Facility Authority would therefore be costly to the State taxpayers. Additionally, with this legislation allowing the State to manage and operate a medical facility as well as purchase and/or construct real or personal property, the costs and expenses incurred would directly affect the State budget. The potential for cost to the State taxpayers in this case is overwhelming.
- 5) May have adverse affects on the development of medical facilities. Criteria does not exist in this legislation for selection of the facilities or geographic areas that would benefit from this legislation. Those not selected could be adversely affected by the States action.
- 6). There exists State and Federal legislation that addresses and provides for planning organizations, Health Systems Agencies, that deal specifically with health facilities and programs. The Health Systems Agencies presently through their review and planning process assess the need for medical facilities throughout the state. This proposed legislation ignores these planning bodies and their orderly plans and processes for medical facility development.