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COMMITTEE REPORT
SENATE

4/27/81

FURTHER: Birance

Date: _____

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SF 521
extending state aid for hospitals to specialized hospitals

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Position Paper
on
Senate Bill 521

"An Act extending state aid for hospitals to specialized hospitals; and providing for an effective date.

Any institution which provides room, board, and nursing service and other hospital facilities required in connection with the diagnosis and treatment for one type of care such as a mental hospital, psychiatric hospital, tuberculosis hospital, chronic disease hospital, maternity hospital, maternity home, etc. may qualify for licensure as a specialized hospital under 7 AAC 12.010(b)(2). The quality of care provided and construction standards required for the specific type of care offered through a specialized hospital are the same as are required of a general hospital. As such, the operating costs, construction costs, and maintenance costs of a specialized hospital would not differ significantly from those of a general hospital of the same size.

The reimbursement available from third party payors for services rendered is much lower or non-existent for a facility which is not licensed as a hospital. This provides a strong incentive for a facility which specializes in a certain type of care (e.g., alcoholism treatment, rehabilitation treatment, kidney dialysis, etc.) to seek licensure as a specialized hospital. If state aid for general hospitals is extended to specialized hospitals this will be another incentive causing increased desire on the part of such facilities to seek licensure as specialized hospitals.

DHSS does not view the securing of third party payments or state aid as justification for granting a specialized hospital license. To obtain licensure as a specialized hospital a facility must first obtain a certificate of need by demonstrating:

- 1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;
- 2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent possible;
- 3) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the Division of State Health Planning and Development, DHSS, in obtaining inpatient care of the type proposed in the absence of the proposed new service.

Several other criteria are also considered during the certificate of need review which weigh the impact of a proposed specialized hospital on other institutions; the immediate and long-term financial feasibility of the proposed facility; the relationship of the proposed facility to the State Health Plan and other applicable plans; the availability of less costly alternatives, and the availability of resources (including human resources) necessary to the proposed specialized hospital.

Position Paper
on
Senate Bill 521

Presently there is but one facility in the state, the Juneau Alcohol/Substance Abuse Detoxification and Rehabilitation Facility, which has completed the certificate of need review process and is under consideration for licensure as a specialized hospital. One other facility, the Alaska Treatment Center, Anchorage, has stated its intent to apply for a certificate of need pursuant to licensure as a specialized hospital. In Alaska the general hospitals, due to their low census, usually offer all types of care which are needed and are financially justifiable for the community. In most cases a general hospital will be able to offer the same services at a lower cost than would a newly constructed specialized hospital. Specialized hospitals are not justifiable if a general hospital can offer the same type of service at a more reasonable cost. As such, DHSS does not expect the development of specialized hospital to be high within the state.

Since the costs involved in the construction and operation of a specialized hospital are similar to those of a general hospital, the Department of Health and Social Services supports state aid for specialized hospitals similar to that provided to general hospitals.

Recommended by:

Phoebe A. Lindsey

Phoebe A. Lindsey, Director
Division of State Health
Planning and Development

Date:

May 6, 1981

Approved by:

Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health and
Social Services

Date:

5-12-81

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 521
 Title "An Act extending state aid for hospitals to specialized hospitals; and
 Requested by Miller Date 4/7/81

* providing for an effective date."

II. FISCAL DETAIL

Agency Affected Health and Social Services
 Program Category Affected Health
 BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES			0			
200 TRAVEL			0			
300 CONTRACTUAL			0			
400 COMMODITIES			0			
500 EQUIPMENT			0			
600 LAND & STRUCTURES			0			
700 GRANTS, CLAIMS, ETC.			0			
TOTAL			0			

FUNDING (Thousands of Dollars)

GENERAL FUND			0			
FEDERAL FUNDS			0			
OTHER (Specify Fund Source)			0			

POSITIONS

FULL TIME			0			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE May 6, 1981 PREPARED BY Phoebe A Lindsey
 Original: Legislative Finance AGENCY DHS
 cc: Budget and Management PHONE May 6, 1981
 Prime Sponsor (First Legislator Name) M&B Approval Date 5/6/81

Lee Sharp
Mat Felix
Dennis ReWitt
6-1790
Dore Williams
C&BA

Friday

Introduced: 4/27/81
Referred: Health, Education &
Social Services and Finance

1 IN THE SENATE

SENATE BILL NO. 521 ^{Amended} (HB482)

BY RAY

2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act extending state aid for hospitals to special-
7 ized hospitals; and providing for an effective date."

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

9 * Section . AS 29.89.100(3) is amended to read:

10 ^{revenue sharing} (3) "hospital" means a licensed hospital determined by the
11 Department of Health and Social Services to be a general or specialized
12 hospital; the term excludes a facility operated or wholly supported by
13 the state or the federal government.

14 * Sec. 2. AS 29.90.030(2) is amended to read:

15 ^{construction} (2) "hospital" means a licensed hospital determined by the
16 Department of Health and Social Services to be a general or specialized
17 hospital; the term excludes a facility operated or wholly supported by
18 the state or the federal government;

19 * Sec. 3. This Act takes effect July 1, 1981.

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22 ^(1000 @ bed)
23 ^{funeral -} qualify for 14-16,000
24 alcoholic under this, would get
25 treatment facility 75,000
26 - 14,000
27 59,000

28 \$note
HB 131 3.5 million
29 increased rev. sharing
75,000 → 250,000
Dennis → 9-4259

19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road which is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway which may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for a payment of \$1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consultation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution. (§ 3 ch 155 SLA 1980)

Sec. 29.89.030. State aid to municipalities and other eligible recipients for health facilities and hospitals. (a) The department shall pay

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$75,000 a hospital for those hospitals with 10 or more beds, or \$25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals which have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$4,000 per health facility as the municipality determines.

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

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(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose. (§ 3 ch 155 SLA 1980)

Cross reference. — As to state aid for hospital construction, see AS 29.90.

Editor's note. — As to reports by Department of Health and Social Services and Department of Community and

Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, effective July 1, 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 29.89.040. State aid to volunteer fire departments in the unorganized borough. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized borough or city a sum for protection purposes equal to \$10 per capita for the population served by the department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized borough or city, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal. (§ 3 ch 155 SLA 1980)

Sec. 29.89.050. State aid to Native village governments. The state shall pay \$25,000 to a Native village government for a village which is not incorporated as a city under this title. In this section, "Native village government" means

(1) a local governing body organized by authority of the Act of Congress of June 18, 1934 (25 U.S.C. § 476); or

(2) a traditional village council or, if there is no traditional village council, the paramount chief or other governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. §§ 1601 — 1628). (§ 3 ch 155 SLA 1980)

Sec. 29.89.060. Population determination. For purposes of this chapter, population shall be determined by the latest figures of the United States Bureau of the Census or other reliable population data, including but not limited to public school enrollment figures, public utility connection, registered voters or certified employment payrolls. (§ 3 ch 155 SLA 1980)

Sec. 29.89.070. Area cost-of-living differential. (a) Payments to a municipality or other eligible recipient under AS 29.89.020 — 29.89.030 shall reflect area cost-of-living differentials. Payments shall be based upon the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965. (§ 3 ch 155 SLA 1980)

Sec. 29.89.080. Miscellaneous services account. The miscellaneous services account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible municipalities and other recipients. (§ 3 ch 155 SLA 1980)

Sec. 29.89.090. Regulations. The department shall adopt regulations necessary to carry out the purposes of this chapter. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service for which payment is requested under this chapter was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation. (§ 3 ch 155 SLA 1980)

Sec. 29.89.100. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "health facility"

(A) means a facility which is licensed, when required, by the state under AS 18.20.010 — 18.20.130 and which is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home or convalescent center.

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(C) excludes a facility operated or wholly supported by the state or the federal government;

(3) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government. (§ 3 ch 155 SLA 1980)

Chapter 90. State Aid for Hospital Construction.

Section

10. State aid for hospital construction
 20. Hospital construction assistance account
 30. Definitions

Cross reference. — As to state aid to municipalities and other eligible recipients for health facilities and hospitals, see AS 29.89.030.

Effective date of chapter. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 of the act take effect on the first day of the fiscal year for which \$33,400,000 or more is appropriated and allowed by the governor for distribution to municipalities and other recipients under the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of \$33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 165, SLA 1980.

Editor's note. — Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides: "(a) Notwithstanding other provisions of secs. 1 — 11 of this act, (1) a municipality may not receive less than \$25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective; and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount

equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.080, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to these accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

As to reports by Department of Health and Social Services and Department of Community and Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 29.90.010. State aid for hospital construction. If construction of a hospital began after January 1, 1968, and state matching aid for construction approved for payment to the municipality or other hospital sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital sponsor each fiscal year \$2,500 a bed for the maximum number of beds provided for in the construction design of the facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital sponsor has received an amount which, combined with state matching money for construction of the hospital, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose. (§ 4 ch 155 SLA 1980)

Sec. 29.90.020. Hospital construction assistance account. The hospital construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients. (§ 4 ch 155 SLA 1980)

Sec. 29.90.030. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government;

(3) "total project cost" means

(A) costs directly related to the project; and

(B) the total of all costs of financing and carrying out the project, including but not limited to,

(i) the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property, and the acquisition of machinery and equipment as may be necessary in connection with the project;

(ii) an allocable portion of the administrative and operating expenses of the municipality or other hospital sponsor;

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

(iv) the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary. (§ 4 ch 155 SLA 1980)

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**Health, Education and
Social Services Committee**

Charlie Parr, Chairman
Terry Stimson, Vice-Chairman
Vic Fischer
Tim Kelly
Mike Colletta



Official Business

Alaska State Legislature

Senate

June 9, 1981

TO: Legal Services
FROM: Sandra Stringer
A.A., Senate HESS

Please prepare a committee substitute for SB 521 by removing all of the language from SB 521 and replacing it with all of the language from HB 393. SB 521 will then also need a title change.

Thank you,

Sandra

465-3787

Pouch V
State Capitol
Juneau, Alaska 99811
465-4907
465-4908

HEALTH

CHAPTER 1202

SENATE BILL 413 (BEILENSON)

An act to add Chapter 2 (commencing with Section 1250) to Division 2 of, and to repeal Chapter 2 (commencing with Section 1250) of Division 2 of, the Health and Safety Code, to amend Sections 16300 and 16312 of the Welfare and Institutions Code, and to amend Section 19 of Chapter 1148 of the Statutes of 1972, relating to health.

[Approved by Governor October 2, 1973. Filed with Secretary of State October 2, 1973.]

LEGISLATIVE COUNSEL'S DIGEST

SB 413, Beilenson. Health.

Repeals and reenacts provisions relating to licensing of health facilities to revise facilities subject to licensure, provide for licensure of various prescribed classes of health facilities, and for issuance of special permits in addition to a license authorizing a health facility to offer one or more of prescribed special services, and revise powers and duties of Department of Health and provisions re offenses, suspension and revocation of licenses, malpractice actions, and services in health facilities.

Provides for special fees to be charged specified health facilities which are to be deposited in the California Health Facilities Account, and provides that no license for such a facility shall be issued or renewed if the fee is not paid.

Makes related provisions.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, as added by Chapter 1148 of the Statutes of 1972, is repealed.

SEC. 2. Chapter 2 (commencing with Section 1250) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2 HEALTH FACILITIES

Article 1 General

1250. As used in this chapter: "health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or

mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour in-patient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides the following basic services: inpatient care to ambulatory or semi-ambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

1250.5. "Council" means the Advisory Health Council.

1251. "License" means a basic permit to operate a health facility, which shall not be transferable.

1251.5. A "special permit" is a permit issued in addition to a license, authorizing a health facility to offer one or more of the special services specified in Section 1253 when the state department has determined that the health facility has met the standards for quality of care established by state department pursuant to Article J (commencing with Section 1275).

1252. "Special service" means a functional division, department, or unit of a health facility which is organized, staffed and equipped to provide a specific type or types of patient care and which has been identified by regulations of the state department and for which the state department has established special standards for quality of care.

1253. No person, firm, partnership, association, corporation, or political subdivision of the state, or other governmental agency within the state shall operate, establish, manage, conduct, or maintain a health facility in this state, without first obtaining a license therefor as provided in this chapter, nor provide, after July 1, 1974, special services without approval of the state department. However, any health facility offering any special service on the effective date of this section shall be approved by the state department to continue such services until the state department evaluates the quality of such services and takes permitted action.

1254. The state department shall inspect and license health facilities. The state department shall license general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, and intermediate care facilities to provide their respective basic services specified in Section 1250. Except as provided in Section 1253, the

*Includes
Anesthesia and
Laboratory
Surgery*

HEALTH FACILITY CONSTRUCTION

Eminent Domain

Assembly Bill 3145 (Brown), Chapter 1018, revises the conditions precedent to the exercise of eminent domain by nonprofit hospitals. Requires a public hearing in the area in which the hospital is located and notification, to the local voluntary health planning agency, of such a hearing. Further requires the planning agency response to the Department prior to the hearing and within 90 days of notice. Stipulates that the hearing shall, in part, at least consider the proposed expansion's impact upon the delivery of health care services in the community and upon the environment. This urgency measure became effective September 23, 1974. (Amends Section 1236.3 of the Code of Civil Procedure.)

Seismic Safe., Fee

Assembly Bill 3636 (Lanterman), Chapter 1088, clarifies the fee provision of the Seismic Safety Law passed in 1972. Retains the 0.7 per cent maximum of the estimated construction cost, but allows development of a sliding scale. This amendment will eliminate situations where projects were subject to fees often out of proportion to the relative size of the project. (Amends Section 15011 of the Health and Safety Code.)

Loan Insurance

Senate Bill 1627 (Stull), Chapter 17, authorizes any joint powers entity to be a borrower and to have all other powers, duties and responsibilities under the California Health Facilities Construction Loan Insurance Law applicable to cities, counties and district hospitals. This urgency measure became effective February 11, 1974. (Amends Section 426.2 of the Health and Safety Code.)

Seismic Safety Commission

Senate Bill 1729 (Alquist), Chapter 1413, creates the Seismic Safety Commission and requires an annual report to the Governor and the Legislature concerning earthquake hazard reduction. Provides that the Strong Motion Instrumentation Board and Building Safety Board shall report annually to the Commission. Provides for the termination of the Commission upon the 61st day after final adjournment of the 1975-76 Legislative Session. (Adds and repeals Chapter 13 commencing with Section 8190 of Division 1 of Title 2 of the Government Code.)

Seismic Safety

Senate Bill 1985 (Alquist), Chapter 244, revises the definition of "hospital building" for purposes of seismic safety to mean and include any building used, or designated to be used, for a hospital including all health facilities of a type required to be licensed pursuant to Chapter 2 commencing with Section 1230 of the Health and Safety Code. It excludes any building which is not physically attached to a health facility and in which only outpatient services are provided. This urgency measure became effective May 14, 1974. (Amends Section 13001 of the Health and Safety Code.)

HEALTH FACILITY LICENSING

Special Hospitals

Assembly Bill 2677 (Weisman), Chapter 1644, corrects a legislative oversight in Senate Bill 412, Chapter 1202, Statutes of 1972. Defines "special hospital," for the purpose of licensure, as a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides rehabilitation, dental or maternity, specialty and outpatient care. (Amends Sections 1230 and 1234 of the Health and Safety Code.)



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT 586-3300

May 21, 1981

Senator Charles Parr, Chairman
Senate Health, Education and
Social Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

File: Legislature - 1981 - SB 521

Subject: Support of Bill

Dear Chairman Parr:

Senate Bill 521 deals with two problems. Section 1 deals with the inequity that arises in the revenue sharing system for hospitals and health facilities. Presently, under AS 29.89.030, a hospital (defined as a general hospital) is entitled to a minimum annual revenue sharing grant of \$75,000 if it contains 10 or more beds. A health facility is entitled to only \$1,000 per bed. Thus, a 10 bed general hospital would receive \$75,000 while a 10 bed health facility would receive only \$10,000. Prior to this year this disparity probably created no serious problems of equity. However, there has just come into being in this state a type of facility which is known as a specialized hospital. The specialized hospital is a hospital which does not offer the full range of medical treatment offered in a general hospital. However, the specialized hospital must meet all applicable regulations of a general hospital, both for construction and operation, as the Department of Health and Social Services determines are applicable to the specialized hospital. To be licensed as a specialized hospital, the facility must first obtain a certificate of need just as a general hospital does and must meet the more stringent construction and operation requirements of a general hospital. Thus, the operating expenses of a specialized hospital more closely approach those of a general hospital than they do those of a mere health facility. Unfortunately, as the law is now written a specialized hospital could qualify only as a health facility. By changing the definition of "hospital" to include both general and specialized hospitals this problem of equity will be overcome. Section 1 of Senate Bill 521 would accomplish that change.

Section 2 of the bill relates to the same sort of problem which exists under the construction grant revenue sharing portion of the statute. Prior to July 1, 1980 both hospitals and health facilities were qualified for construction aid in the amount of 25% of the


May 21, 1981

construction costs which were not met by the state under other facility grant programs. When the revenue sharing statute was revised in 1980, construction aid for health facilities was deleted. This left only general hospitals qualified to receive construction aid. For the reasons discussed above, the inequity which exists here between a general and specialized hospital is even greater as the specialized hospital receives zero while the general hospital receives a guarantee of 25% assistance.

In the case of Juneau's Alcohol and Drug Abuse Medical Treatment Hospital (a specialized hospital) the situation seems even more unfair. With the encouragement of the State of Alaska, Juneau proposed to build a regional hospital facility for the medical treatment of alcoholism and drug abuse. At the time the facility was proposed, planned and constructed, it qualified for construction aid as construction aid at that time was available for both general hospitals and health facilities. Thus, when we planned and constructed our facility it was immaterial whether it was classified as a general hospital, specialized hospital or health facility as it qualified under the law then on the books for a 25% construction aid grant. However, right after we completed the construction the construction aid statute was changed to limit aid to general hospitals. I believe that we have the only facility in the state which had the rug pulled out from under it by this change in the revenue sharing statute. Section 2 of the bill would not only have the effect of restoring construction aid equity between general and specialized hospitals, but it would also make our facility eligible once again for the construction aid assistance which we relied upon when we constructed our facility.

We urge you to pass out Senate Bill 521 with a do pass recommendation.

Sincerely,


Gerald L. Sharp
City-Borough Attorney

GLS:JR

cc: Senator Bill Ray

Jim Makelfield, Chairman
Assembly Legislative Committee

Ginny Chitwood, Director, ADU.

Matt Fells, Director
Alcohol and Drug Abuse Central Agency



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-3300

May 27, 1981

Senator Charles Parr, Chairman
Senate Health, Education and
Social Services Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

File: Legislature - 1981 - SB 521
(State Aid to Specialized Hospitals)

Subject: Alternate Approach

Dear Senator Parr:

At the hearing on Senate Bill 521 held on Friday, May 22, 1981, there was some indication that while, for revenue sharing purposes, a specialized hospital should not be classified with mere health facilities, elevating the specialized hospital to the status of a general hospital might be going a little too far. The alternative of creating a third category for specialized hospitals seemed to be the most reasonable alternate. Such a third category could be established by renumbering the existing section 2 in the bill as section 3 and substituting new sections 1 and 2 for the existing section 1.

*Section 1. AS 29.89.030(a) is amended by adding a new section (4) reading:

(4) to a municipality which has the power to provide specialized hospital facilities and services and which exercises that power, an amount per bed authorized for a general hospital in section (a)(1) for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the specialized hospital, or 80% of the minimum grant authorized for the same size general hospital in section (a)(1), as the municipality may elect; money received under this paragraph may be used only for specialized hospitals and shall be apportioned among qualifying specialized hospitals as the municipality determines.

*Sec. 2. AS 29.89.100 is amended by adding a new section (4) reading:

(4) "specialized hospital" means a licensed hospital determined by the Department of Health and Social Services

to be a specialized hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

I have attached for your convenience a copy of the statute sections which would be amended by the proposed new language. Note that the language proposed tracks with existing language which deals with general hospitals.

The specialized hospital in Juneau is a 16-bed facility. Under existing law its entitlement would be \$16,000 (\$1,000 per bed for health facilities). The facility has a proposed operating budget in excess of a million dollars. Under the language proposed above, the entitlement would go to \$60,000, a figure which seems much more in line with the expensive burdens placed upon a specialized hospital.

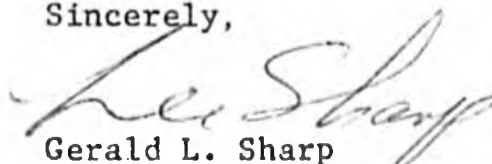
For your information, the operation of the Juneau specialized hospital differs very little from that of a general hospital, the major difference being that the specialized hospital does not have to maintain facilities or provide for services which do not relate to the specialized medical treatment provided by the specialized hospital. For example, at our specialized hospital, all patients are admitted under the care of the patient's personal physician or under the care of a licensed physician retained by the specialized hospital. Our physician makes daily rounds of the patients under her care and is on call 24 hours a day. We have not less than one registered nurse (R.N.) on duty at all times. The RN's perform the same functions as they would in a general hospital, e.g., administration of medications, observation of patients, and completion of medical records and graphs, including measurement and recording of vital signs at least three times a day. The hospital maintains complete medical records, including the patient's history and physical, physician progress notes, nurses notes from each shift, vital sign graphs, physician discharge summary, etc. The hospital must meet state general hospital standards relating to infection control and isolation. These control measures affect all staff, including kitchen, housecleaning, laundry, as well as nursing staff and physicians. The specialized hospital must maintain a quality assurance program meeting state standards. These standards are national standards adopted for general hospitals. None of the above are required of health facilities.

Alcohol and drug abuse are "diseases" which respond to medical treatment. Unfortunately, the combination of the high cost of medical treatment and the stigma of being afflicted by such a disease often prevents those who need such treatment the most from seeking it. Anything we can do to reduce the cost will help induce

May 27, 1981

those who need, but might otherwise forego, treatment to voluntarily enter a medical treatment program. Providing revenue sharing commensurate with the needs of specialized hospitals such as ours will be a significant step in reducing treatment costs to the persons needing help.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS: jr

Enclosure

cc: Senator Bill Ray

Jim Wakefield, Chairman
Assembly Legislative Committee

Matt Felix, Director
Alcohol and Drug Abuse Central
Agency

Ginny Chitwood, Director, AML

Position Paper
on
Senate Bill 521

"An Act extending state aid for hospitals to specialized hospitals; and providing for an effective date.

Any institution which provides room, board, and nursing service and other hospital facilities required in connection with the diagnosis and treatment for one type of care such as a mental hospital, psychiatric hospital, tuberculosis hospital, chronic disease hospital, maternity hospital, maternity home, etc. may qualify for licensure as a specialized hospital under 7 AAC 12.010(b)(2). The quality of care provided and construction standards required for the specific type of care offered through a specialized hospital are the same as are required of a general hospital. As such, the operating costs, construction costs, and maintenance costs of a specialized hospital would not differ significantly from those of a general hospital of the same size.

The reimbursement available from third party payors for services rendered is much lower or non-existent for a facility which is not licensed as a hospital. This provides a strong incentive for a facility which specializes in a certain type of care (e.g., alcoholism treatment, rehabilitation treatment, kidney dialysis, etc.) to seek licensure as a specialized hospital. If state aid for general hospitals is extended to specialized hospitals this will be another incentive causing increased desire on the part of such facilities to seek licensure as specialized hospitals.

DHSS does not view the securing of third party payments or state aid as justification for granting a specialized hospital license. To obtain licensure as a specialized hospital a facility must first obtain a certificate of need by demonstrating:

- 1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;
- 2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent possible;
- 3) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the Division of State Health Planning and Development, DHSS, in obtaining inpatient care of the type proposed in the absence of the proposed new service.

Several other criteria are also considered during the certificate of need review which weigh the impact of a proposed specialized hospital on other institutions; the immediate and long-term financial feasibility of the proposed facility; the relationship of the proposed facility to the State Health Plan and other applicable plans; the availability of less costly alternatives, and the availability of resources (including human resources) necessary to the proposed specialized hospital.

Position Paper
on
Senate Bill 521

Presently there is but one facility in the state, the Juneau Alcohol/Substance Abuse Detoxification and Rehabilitation Facility, which has completed the certificate of need review process and is under consideration for licensure as a specialized hospital. One other facility, the Alaska Treatment Center, Anchorage, has stated its intent to apply for a certificate of need pursuant to licensure as a specialized hospital. In Alaska the general hospitals, due to their low census, usually offer all types of care which are needed and are financially justifiable for the community. In most cases a general hospital will be able to offer the same services at a lower cost than would a newly constructed specialized hospital. Specialized hospitals are not justifiable if a general hospital can offer the same type of service at a more reasonable cost. As such, DHSS does not expect the development of specialized hospital to be high within the state.

Since the costs involved in the construction and operation of a specialized hospital are similar to those of a general hospital, the Department of Health and Social Services supports state aid for specialized hospitals similar to that provided to general hospitals.

Recommended by:

Phoebe A. Lindsey
Phoebe A. Lindsey, Director
Division of State Health
Planning and Development

Date:

May 6, 1981

Approved by:

Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health and
Social Services

Date:

5-12-81

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 521
 Title "An Act extending state aid for hospitals to specialized hospitals; and
 Requested by Miller Date 4/7/81

* providing for an effective date."

II. FISCAL DETAIL

Agency Affected Health and Social Services
 Program Category Affected Health
 BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 02	FY 83	FY 04	FY 85	FY 86
100 PERSONAL SERVICES			0			
200 TRAVEL			0			
300 CONTRACTUAL			0			
400 COMMODITIES			0			
500 EQUIPMENT			0			
600 LAND & STRUCTURES			0			
700 GRANTS, CLAIMS, ETC.			0			
TOTAL			0			

FUNDING (Thousands of Dollars)

GENERAL FUND			0			
FEDERAL FUNDS			0			
OTHER (Specify Fund Source)			0			

POSITIONS

FULL TIME			0			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE May 12, 1981 PREPARED BY Phoebe A Lindsey
 AGENCY DHS
 Original: Legislative Finance FINISH May 6, 1981
 cc: Budget and Management
 Prime Sponsor (If not Legislator Named) MAB Approval Li Lindsey Date 5/1/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST SB No. 521/HB No. 482
 Title State Aid for hospitals to specialized hospitals
 Requested by Senator Ray Date 5/19/81

II. FISCAL DETAIL Department of Community & Regional Affairs
 Agency Affected Development
 Program Category Affected Community Assistance Grants
 BRU, Program, or Subprogram(s) Affected Community Assistance Grants
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		113.8	188.8	198.3	208.2	218.6
TOTAL	-0-	113.8	188.8	198.3	208.2	218.6

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	-0-	113.8	188.8	198.3	208.2	218.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) According to the Department of Health and Social Services position paper on HB No: 482 (copy attached) there is one facility under consideration for licensure as a specialized hospital; the Juneau Alcohol/ Substance Abuse Detoxification and Rehabilitation Facility. This facility would be eligible for funding under two sections of the current law. Section 29.89.030 State Aid to municipalities and other eligible recipients for health facilities and hospitals and Section 29.90.010 State Aid for hospital construction.

Section 29.89.030 funding \$ 75,000
 Section 29.90.010 funding 38,763
 FY 82 additional funding needed \$ 113,763

In FY 83 it is assumed that the Anchorage Treatment Center will also be eligible for funding.
 Section 29.89.030 funding \$ 75,000
 A five percent increase has been added to the next three fiscal years.

IV. DATE 5/22/81 PREPARED BY Netta Crado
 AGENCY Community & Regional Affairs
 PHONE 465-4733
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road which is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway which may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for a payment of \$1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consultation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution. (§ 3 ch 155 SLA 1980)

Sec. 29.89.030. State aid to municipalities and other eligible recipients for health facilities and hospitals. (a) The department shall pay

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or \$75,000 a hospital for those hospitals with 10 or more beds, or \$25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals which have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, \$1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or \$4,000 per health facility as the municipality determines.

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

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(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose. (§ 3 ch 155 SLA 1980)

Cross reference. — As to state aid for hospital construction, see AS 29.90.

Editor's note. — As to reports by Department of Health and Social Services and Department of Community and

Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, effective July 1, 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 29.89.040. State aid to volunteer fire departments in the unorganized borough. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized borough or city a sum for protection purposes equal to \$10 per capita for the population served by the department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized borough or city, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal. (§ 3 ch 155 SLA 1980)

Sec. 29.89.050. State aid to Native village governments. The state shall pay \$25,000 to a Native village government for a village which is not incorporated as a city under this title. In this section, "Native village government" means

(1) a local governing body organized by authority of the Act of Congress of June 18, 1934 (25 U.S.C. § 476); or

(2) a traditional village council or, if there is no traditional village council, the paramount chief or other governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. §§ 1601 — 1628). (§ 3 ch 155 SLA 1980)

Sec. 29.89.060. Population determination. For purposes of this chapter, population shall be determined by the latest figures of the United States Bureau of the Census or other reliable population data, including but not limited to public school enrollment figures, public utility connection, registered voters or certified employment payrolls. (§ 3 ch 155 SLA 1980)

Sec. 29.89.070. Area cost-of-living differential. (a) Payments to a municipality or other eligible recipient under AS 29.89.020 — 29.89.030 shall reflect area cost-of-living differentials. Payments shall be based upon the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965. (§ 3 ch 155 SLA 1980)

Sec. 29.89.080. Miscellaneous services account. The miscellaneous services account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible municipalities and other recipients. (§ 3 ch 155 SLA 1980)

Sec. 29.89.090. Regulations. The department shall adopt regulations necessary to carry out the purposes of this chapter. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service for which payment is requested under this chapter was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation. (§ 3 ch 155 SLA 1980)

Sec. 29.89.100. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "health facility"

(A) means a facility which is licensed, when required, by the state under AS 18.20.010 — 18.20.130 and which is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home or convalescent center;

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(C) excludes a facility operated or wholly supported by the state or the federal government;

(3) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government. (§ 3 ch 155 SLA 1980)

Chapter 90. State Aid for Hospital Construction.

Section

- 10. State aid for hospital construction
- 20. Hospital construction assistance account
- 30. Definitions

Cross reference. — As to state aid to municipalities and other eligible recipients for health facilities and hospitals, see AS 29.89.030.

Effective date of chapter. — Section 17, ch. 155, SLA 1980, provides that §§ 1 — 12 of the act take effect on the first day of the fiscal year for which \$33,400,000 or more is appropriated and allowed by the governor for distribution to municipalities and other recipients under the provisions of §§ 1 — 12 of this act or on July 1, 1983, whichever is earlier. A total of \$33,500,000 was appropriated for the programs for the fiscal year beginning July 1, 1980. The appropriations were made in §§ 51 and 52, ch. 120, SLA 1980, and § 6, ch. 165, SLA 1980.

Editor's note. — Section 12, ch. 155, SLA 1980, effective on the same day as this chapter, provides: "(a) Notwithstanding other provisions of secs. 1 — 12 of this act, (1) a municipality may not receive less than \$25,000 plus an area cost-of-living differential during the first fiscal year in which this act is effective; and (2) a municipality which would receive under AS 29.88, added by sec. 2 of this act, less than 125 percent of the amount which it received for the last fiscal year under AS 43.18.010 — 43.18.045, repealed by sec. 11 of this act, is, for each of the first five fiscal years during which secs. 1 — 10 of this act are effective, entitled to receive an amount

equal to 125 percent of the amount which it received for the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045 in accordance with those provisions. (b) For the first five fiscal years during which secs. 1 — 10 of this act are effective, in order to pay the amounts required by (a) of this section, the allocations made by the Department of Community and Regional Affairs to the accounts established in AS 29.88.035, AS 29.89.040, and AS 29.90.020 shall be prorated by an amount which reduces the allocation to each account in equal proportion, and the prorated amounts shall be allocated to these accounts. (c) For the first five fiscal years during which secs. 1 — 10 of this act are effective, payment of an entitlement to a borough under AS 29.88 may be made to a borough only if the borough assembly agrees to allocate to each borough service area in the borough at least the amount of money that the service area received during the last fiscal year under the former provisions of AS 43.18.010 — 43.18.045, in accordance with those provisions."

As to reports by Department of Health and Social Services and Department of Community and Regional Affairs and commissioner of health and social services, see § 14, ch. 155, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 29.90.010. State aid for hospital construction. If construction of a hospital began after January 1, 1968, and state matching aid for construction approved for payment to the municipality or other hospital sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital sponsor each fiscal year \$2,500 a bed for the maximum number of beds provided for in the construction design of the facility or five percent of the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital sponsor has received an amount which, combined with state matching money for construction of the hospital, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose. (§ 4 ch 155 SLA 1980)

Sec. 29.90.020. Hospital construction assistance account. The hospital construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients. (§ 4 ch 155 SLA 1980)

Sec. 29.90.030. Definitions. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government;

(3) "total project cost" means

(A) costs directly related to the project; and

(B) the total of all costs of financing and carrying out the project, including but not limited to,

(i) the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property, and the acquisition of machinery and equipment as may be necessary in connection with the project;

(ii) an allocable portion of the administrative and operating expenses of the municipality or other hospital sponsor;

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

(iv) the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary. (§ 4 ch 155 SLA 1980)

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MEMORANDUM

State of Alaska

DEPT. OF COMMUNITY
REGIONAL AFFAIRS
APR 27 1981

RECEIVED

TO Hon. Lee McAnerney, Commissioner
Dept of Community & Regional Affairs

DATE: April 27, 1981

ATTN: Palmer McCarter, Director
Div. of Local Gov't Asst

FILE NO: J-66-335-81

TELEPHONE NO: 465-3600

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: State revenue sharing
with IRA councils and
traditional councils,
chiefs, or other gov-
erning bodies

By: Rodger W. Pegues
Assistant Attorney General

You have asked for additional advice on this subject.

Under AS 29.89.050, the state pays \$25,000 annually to a "Native village government for a village which is not incorporated as a city . . ." The term is defined as a local governing body organized under section 16 of the Indian Reorganization Act, 25 U.S.C.A. 476 (1963) which was applied to Alaska by the Act of May 1, 1936, 25 U.S.C.A. § 473a (1963), */ or as a traditional village council, paramount chief, or other governing body of a village.

This statute creates serious constitutional problems. If the money is not expended by the recipient to provide public services in a racially non-discriminatory manner, the public purpose clause **/ and the equal protection clause ***/ of the Alaska Constitution will have been violated. Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963). The test, however, is not the racial or religious character of the recipient but the character of the use to which the money will be put. Id. And the courts will look at the entire factual and governmental context on a case-by case basis to determine whether the expenditure serves a public purpose. Wright v. City of Palmer, 458 P.2d 326 (Alaska 1970). Accordingly, the constitutional provisions which require a public purpose and equal protection will not be offended so long as the services

*/ There is a question whether any section 16 tribal organization, other than the Metlakatla Indian Community Annette Islands Reserve, Alaska, still exercises governmental powers after the enactment of the Alaska Native Claims Settlement Act.

**/ Alaska Const., art. IX, § 6. "No tax shall be levied, or appropriation of public money made, or public property transferred . . . except for a public purpose."

***/ Alaska Const., art. I, § 1; U.S. Const., Amend. XIV, § 1.

provided by a village council are furnished on a non-discriminatory basis.

A much less easily resolved problem lies in another provision of the Alaska Constitution, article X, section 2:

All local government power shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

This limitation of "local government power" to boroughs and cities is preceded by a purpose clause which states:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

The record of the debates at the Constitutional Convention makes it clear beyond reasonable doubt that this three-fold statement of purpose and construction precisely and concisely sums up the essence of the article on local government and the intent of its framers. The framers perceived three evils hobbling local government in Alaska and elsewhere: One, there were a multiplicity of overlapping, special (often single) purpose districts, each little known to the average voter and each monomaniacally pursuing its own goals in disregard and often in conflict with other special purpose districts occupying the same, or part of the same, area. Two, many of these districts operated on revenues from special purpose projects, for example sewage disposal districts. Others levied taxes. Their single purpose orientation, lack of centralized control and responsibility, distance from any meaningful relationship to the voters, and lack of any need to compete for a share of an integrated budget made tax levies and expenditures excessive and irrational. Three, the courts had hobbled local governments with general rules for construing their powers under which local governments could not respond to pressing needs because they could not find some express provision of a statute or charter which gave them the power to act on the subject. The framers crafted article X to cure or remove all three evils. Fairview Pub. Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543-545 (Alaska 1962).

The provisions of article X carry out the framers

purposes. They prescribe that a "liberal construction shall be given to the powers of local government units." Alaska Const., art. I, § 1. They limit local government powers to cities and boroughs. Id., § 2. They allow the legislature to delegate taxing power to boroughs and cities only. Id. They prohibit new special districts ("service areas") from being established "if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city." Id., § 5. The adoption of home rule charters is placed in the hands of local voters, id., § 9, and home rule local governments have all powers not prohibited by law or charter. Id., § 11. Finally, to make boundary changes, including mergers, as easy as possible, a state commission is empowered to change them, subject only to a two-house veto by the legislature. id., § 12. In other words, if the constitution is followed, none of the three evils the framers sought to cure and avoid can exist in Alaska.

The use of traditional village councils or IRA councils to provide local government services is at odds with the constitution's provisions on local government. The public services they would perform are those which local governments perform. The Alaska Constitution limits the exercise of those powers by political subdivisions of the state to boroughs and cities. The tribal councils are neither. If they are duly organized under section 16 of the Act, 25 U.S.C.A. 476 (1963), they are tribal governments with sovereign immunity. Parker Drilling Co. v. Metlakatla Indian Community, 451 F.Supp. 1127 (D. Alaska 1978); Atkinson v. Haldane, 569 P.2d 151 (Alaska 1977). Financing a broad range of tribal government activities on the part of the councils is not for a public purpose of the state. Financing a broad range of non-tribal, local government activities through the councils would effectively raise them to the status of local governments. That conflicts with the constitutional mandate that the legislature may only use cities or boroughs to provide local government, and it indubitably removes any incentive -- or even any rational basis -- for a village to incorporate as a city. It would also have the practical effect of creating or sanctioning a racially exclusive de facto local government under color of state law, which is the reason that tribal councils cannot be designated by the state to be cities or local governments. Under the Equal Protection Clause, the state cannot set up racially exclusive political subdivisions.

This is not to say that the state cannot contract with a racially (or religiously) exclusive group to provide

public services or manage a public facility on a non-discriminatory basis for all the residents of a community. On a limited basis, therefore, grants can be made to IRA councils in their capacity as business corporations to provide some public services. The state constitution, however, bars the de facto establishment under state law of these councils as the local governments of Alaska's villages.

There is still another problem. In making monetary distribution to Native village governments but not to other potential applicants for grants in these villages and in other unincorporated communities, the statute may create equal protection problems by discriminating against the latter without a reasonable basis, if these are responsible parties which are equally capable of providing community services. This problem can be solved by amending the law to open the class of beneficiaries to other entities and other communities and including them, on application, in the distribution. We understand that there are 30 of these communities.

Turning to your specific questions, first to be eligible to participate in the revenue sharing program, the community must meet the statutory requirements, make application, and undertake to expend the money for public purposes on a non-discriminatory basis. Because the contract cannot be enforced in court unless Congress waives the tribal government's sovereign immunity, you should use forfeiture of the grantee's right to a grant in the following fiscal year as an enforcement mechanism.

Second, state money cannot be expended for the costs of general administration because the village councils and other groups are not public agencies of the state or its political subdivisions. They are, on the one hand, federally recognized and organized tribal entities, and on the other, private associations or corporations. With respect to the former, depending on whether they are organized under section 16, section 17, or both of the Indian Reorganization Act, they are governmental, corporate, or both. In their governmental role, they are tribal. In their corporate role, they are private. All of them can provide public services on a non-discriminatory basis, and to the extent that they do so, a proportional share of their general administrative costs can be paid from state money.

Third, we know of no way to insure that the money will be spent for the good of the whole community. Obviously, each recipient must be required to promise that the money will

Palmer McCarter, Director
C&RA - Local Government Asst

- 5 -

April 27, 1981

be spent for the good of the entire community and to specify what public services it will provide on a racially non-discriminatory basis. Enforcement will be difficult against a tribal council acting in its governmental capacity under section 16 of the IRA. For that reason, if a section 17 corporation exists, the grant-contract should state that it is with the village council acting in its capacity as a business corporation.

RWP/pjg

cc: Hon. William R. Nix
Commissioner
Department of Public Safety

Daniel W. Hickey
Chief Prosecutor
Juneau AGO - Criminal Section

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 521

Title An Act relating to aid for health facility construction

Requested by Miller

Date June 2, 1981

II. FISCAL DETAIL

Agency Affected Department of Community and Regional Affairs

Program Category Affected Development

BRU, Program, or Subprogram(s) Affected Local Government Assistance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		-0-	-0-	-0-	-0-	
200 TRAVEL		-0-	-0-	-0-	-0-	
300 CONTRACTUAL		-0-	-0-	-0-	-0-	
400 COMMODITIES		-0-	-0-	-0-	-0-	
500 EQUIPMENT		-0-	-0-	-0-	-0-	
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	
700 GRANTS, CLAIMS, ETC.		41.6	41.6	41.6	40.6	
TOTAL		41.6	41.6	41.6	40.6	

FUNDING (Thousands of Dollars)

GENERAL FUND		41.6	41.6	41.6	40.6
FEDERAL FUNDS		-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)		-0-	-0-	-0-	-0-

POSITIONS

FULL TIME		-0-	-0-	-0-	-0-
PART TIME					
TEMPORARY					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

If HB 393 is enacted three additional health facilities will be eligible to receive construction aid funding. Funding for these new facilities would come from Chapter 90 which is already funded for the purpose of paying for construction cost of hospitals. Additional funding is necessary if the definition of a facility eligible of construction cost reimbursement is expanded. The following is a list of the facilities that would benefit from this legislation showing the amount of funding that they could receive if Chapter 90 of the State Revenue Sharing Program is adequately funded:

	FY 82	FY 83	FY 84	FY 85
SE Detonification (Juneau)	\$38,763	38,763	38,763	38,763
Akiachak Health Clinic	1,851	1,851	1,851	1,851
Napaskiak	1,000	1,000	1,000	-0-

IV. DATE June 2, 1981

PREPARED BY Doug Griffin

AGENCY Community & Regional Affairs/LGAD

Original: Legislative Finance

PHONE 465-4736

cc: Budget and Management

Prime Sponsor (First Legislator Named)

"An act related to state aid for health facility construction; and providing for an effective date."

House Bill 393 proposes to include the cost of constructing certain health facilities constructed after January 1, 1968, and before July 1, 1980, as eligible costs for reimbursement under AS 29.90.010. Following conversations with the Department of Community and Regional Affairs it is the understanding of the Department of Health and Social Services (DHSS) that HB 393 would affect only three health care facilities: Juneau Alcoholism/Substance Abuse Detoxification and Rehabilitation Facility, Akiachak Health Clinic and Napaskiak Health Clinic.

The greatest impact would be upon the Juneau Alcoholism/Substance Abuse Detoxification and Rehabilitation Facility. This facility had been constructed with the anticipation of receiving a total of \$193,815 over a five year period under AS 43.18.010(j). One payment in the amount of \$38,763 was made to the City and Borough of Juneau before the municipal revenue sharing formula was recodified under Title 29 in 1980. The remaining four payments were not received by the City and Borough of Juneau since the Bill which recodified AS 43.18.010 also restricted reimbursement of health care facility construction costs to licensed hospitals, determined by DHSS to be general hospitals.

The effect of HB 393 would be to "reinstate" the Juneau Alcoholism/Substance Abuse Detoxification and Rehabilitation Facility, Akiachak Health Clinic, and Napaskiak Health Clinic as eligible facilities for the purposes of revenue sharing under AS 29.90.010. According to the Department of Community and Regional Affairs these facilities would receive the following funds over the next four years:

	<u>FY '82</u>	<u>FY '83</u>	<u>FY '84</u>	<u>FY '85</u>
Juneau Alcoholism/ Substance Abuse Detoxification	\$38,763	\$38,763	\$38,763	\$38,763
Akiachak	1,851	1,851	1,851	1,851
Napaskiak	1,000	1,000	1,000	-0-
Total	\$41,614	\$41,614	\$41,614	\$40,614

DHSS believes it would not be unreasonable to continue the anticipated payments to these facilities.

Recommended by: Phoebe A. Lindsey
Phoebe A. Lindsey, Director
Division of State Health
Planning and Development

Date: April 22, 1981

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Department of Health &
Social Services

Date: 4/27/81

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 393

Title "An Act related to state aid for health facility construction, and providing *

Requested by Miller Date 3/25/81

* for an effective date."

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Health

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		0				
OTHER (Specify Fund Source)		0				
		0				

POSITIONS

FULL TIME		0				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 22, 1981

PREPARED BY Phyllis A. Lindsey

AGENCY DHSS

Original: Legislative Finance

PHONE 3038

cc: Budget and Management

Prime Sponsor (First Legislator Name) M&B Approval [Signature]

Date 4/20/81