

SB67

SENATE FINANCE COMMITTEE REPORT

DATE: 3/6/91

FURTHER:

DATE TURNED INTO OFFICE: 4/29/91

The Finance Committee considered SENATE BILL NO. 67

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

and recommended:

- replace with _____ CS SB 67 (Finance)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) DH&SS 128.5 4/24/91

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DC PASS:

[Signature]

[Signature]

[Signature]

[Signature]

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

[Signature]

[Signature] (NO REC)

1. [Signature] do pass

2. [Signature] do pass

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSS67

Revision Date: April 24, 1991 Dept. Affected: Health & Social Services
 Title: An Act relating to aid for nonprofit health facilities and providing for an effective date BRU: Administrative Services
 Component: Facilities/CIP
 Sponsor: Jones, Zharoff
 Requestor: by the HESS Committee COMPONENT SERIAL NO. 0325

Expenditures/revenues: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	65.4	68.4	68.4	68.4	68.4	68.4
TRAVEL	17.4	17.9	17.9	21.4	17.9	17.9
CONTRACTUAL	38.8	38.8	38.8	41.8	38.8	38.8
SUPPLIES	0.9	0.9	0.9	0.9	0.9	0.9
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	128.5	126.0	126.0	132.5	126.0	126.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	128.5	126.0	126.0	126.0	126.0	126.0
FEDERAL FUNDS						
OTHER						
TOTAL	128.5	126.0	126.0	126.0	126.0	126.0

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: No FY91 fiscal impact.

ANALYSIS: (Attach a separate page if necessary)

This legislation mandates establishment of a seven member Health Facilities Review Board, and includes specific requirements for objectives of the Board and the department. At a minimum, a Health and Social Services Planner II (R19) is needed to perform full administration of all duties related to the implementation of CSSB67. Duties of this position include: writing regulations; analysis and comparison of all 5-year master plans; contact with facilities and resolution of unclear master plans which they have submitted; verification and review of project budgets; analysis and review of all grant applications; staff support for the Health Facilities Review Board

(Continued)

Prepared by: Janet Clarke, Director
 Division: Division of Administrative Services

Phone: 465-3082
 Date: 04/24/91

Approved by Commissioner: Jan Jones for
 Agency: Department of Health and Social Services

Date: 4/24/91

Distribution (by preparer):

Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

ANALYSIS (cont.):

such as making travel arrangements, meeting preparation and meeting support; preparation and submission of all advertising for public hearings; staffing the hearings; administration of all appeals including coordination with board, hearing officers and the Department of Law; administration and execution of grant agreements; review of all grant request documentation and approval of grant payments; accurate accounting of all grant funds, and compilation of grant closeouts; preparation of reports to board on final grant accounting.

DESCRIPTION	COMMENT #	FY92	FY93
Line 100 – Personal Services			
H&SS Planner II, PFT, 12 months, (R19) Juneau	(1)	65,388	68,425
Line 200 – Travel			
72330 Board Travel – Member Travel			
2.5 meetings * 7 members * 3 days = 52.5 days	(2)		
Meetings will be 2 days and 1 day travel			
7 * \$475 average airfare * 2.5 meetings	(3)	8,313	8,750
7 members * \$35 misc. expenses * 2.5 meetings		613	613
72500 Board Travel Per Diem			
52.5 days * \$115		6,038	6,038
72300 Staff Travel for Board Meetings			
(2 meetings * 1 staff * 3 days = 6 days)			
1 staff * \$475 airfare * 2 meetings		950	1,000
1 staff * \$35 misc. expense * 2 meetings		70	70
72500 Staff Travel Per Diem for Board Meetings			
6 days * \$115 per diem		690	690
72300 Staff Travel for Public Hearings			
(1 hearing * 1 staff * 2 days = 2 days)	(4)		
1 staff * \$475 airfare * 1 hearing		475	500
1 staff * \$35 misc. expense * 1 hearing		35	35
72500 Per Diem for Public Hearing			
2 days * \$115		230	230
	TOTAL TRAVEL	17,414	17,926
Line 300 – Contractual Services			
73100 Hearing Officer Professional Services			
(2 appeals @ \$5,000 each)		10,000	10,000
Attorney time and costs related to litigations	(5)	12,000	12,000
Transcription of Public Hearings		1,500	1,500
73300 Communications, including local, long distance, fax and postage			
		9,500	9,500
73500 Advertising for 2 board meetings, 1 public hearing (display ads)			
		3,000	3,000
Printing and Binding of Reports, Minutes and Transcriptions			
		2,500	2,500
73800 Space Rental for meetings			
		300	300
	TOTAL CONTRACTUAL	38,800	38,800

ANALYSIS (cont.):

DESCRIPTION	COMMENT #	FY92	FY93
Line 400 - Supplies			
74200 Office Supplies		600	600
Board Meeting supplies		300	300
	TOTAL SUPPLIES	<u>900</u>	<u>900</u>
Line 500 - Equipment			
75830 Data Processing Equipment (PC and Peripherals) and software		6,000	0
	TOTAL EQUIPMENT	<u>6,000</u>	<u>0</u>
	TOTAL for PROJECT	<u>128,502</u>	<u>126,051</u>

- (1) The staff cost for FY93 assumes a 5% cost of living increase.
- (2) This assumes one meeting for the board to rank hospital grant proposals and one meeting for the board to review appeals. One half of a meeting is budgeted for the board to allow a few board members to attend the public hearing.
- (3) For FY93, it is assumed that average travel costs will increase from \$475 to \$500 per trip.
- (4) This assumes one day for travel and one day to hold the public hearing.
- (5) The \$12,000 figure was provided by the Department of Law as what they would charge to handle all costs related to litigation for two hearings.

47, 230 } 4/29/91
49, 223 } 4/93 Bennett

7-LS0085VP

CS FOR SENATE BILL NO. 67 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS JONES, Zharoff, Merriam

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

5 (d) The grant application must include

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

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

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

16 (1) an architect licensed under AS 08.48;

17 (2) an engineer licensed under AS 08.48;

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

19 (4) a representative from the department;

20 (5) a representative of a health facility;

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

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

23 Governor.

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

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

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

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

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

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

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

5 (b) The primary criteria for establishing the priorities under (a) of this section are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 each grant application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and operation of the health facility;

2 (12) agree to comply with

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

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

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

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

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

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

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

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

23 (1) award of the grant; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 for the project;

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

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

5 (D) the cost of other items, including indemnity and surety bonds and
6 premiums on insurance, legal fees, fees and expenses of trustees, depositories, financial
7 advisors, and paying agents for the bonds issued;

8 (3) "health facility" means a nursing home or a facility that provides
9 hospitalization for inpatient medical and surgical care of acute illness or injury or obstetric care,
10 but does not include a nursing home or facility that has more than 200 beds.

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

12 Sec. 18.25.100. REGULATIONS. The department shall adopt regulations to implement
13 this chapter.

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

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

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

21 * Sec. 5. RETROACTIVE GRANTS. (a) A grant may be made under AS 18.25.011 - 18.25.035,
22 added by sec. 1 of this Act, for construction costs that are incurred before the effective date of this Act
23 ^[and] if the construction project is begun or completed before the effective date of this Act and if the project
24 began after December 31, 1985.

25 (b) Notwithstanding AS 18.25.011(b), the certificate of need required for a construction project
26 described in (a) of this section must have been in effect when the project was begun.

27 (c) The determination of the priority of a construction project described in (a) of this section
28 shall be based on the circumstances existing when the construction project was begun.

29 (d) If the grant is for construction costs described in (a) of this section, the written agreement
30 required under AS 18.25.025 may not include the provisions contained in AS 18.25.025(b)(1) - (11),
31 (13), and (14).

1 (e) Notwithstanding AS 18.25.029, for each grant described in (a) of this section, the state shall
2 pay 75 percent of the costs of construction incurred for the project by the grantee before the effective
3 date of this Act.

4 (f) Notwithstanding AS 18.25.031, after the effective date of the agreement for a grant under
5 AS 18.25.011 - 18.25.035, the Department of Health and Social Services shall advance the entire grant
6 to the grantee if the grant is authorized by (a) of this section.

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

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 16, 1991

SUBJECT: Extension of CSSB 67 (HES) to for-profit health facilities

TO: Senator Pat Pourchot
Co-Chair, Senate Finance Committee
Attn: Susie

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether it is permissible to extend CSSB 67 (HES) to for-profit health facilities ("for-profits"). The bill presently authorizes the making of construction grants to nonprofit health facilities in order to improve health care in the state.

The extension of the bill to for-profit health facilities means that the for-profit facilities would be entitled to apply for and possibly receive construction grants. Under the bill the grant applications would be evaluated and then prioritized according to the criteria established in the bill. This criteria includes the ability of the construction project to be self-supporting and the access to other sources of funding. The for-profits would compete on the same footing with the nonprofits.

There does not appear to be any particular constitutional impediment issue raised by extending the coverage to the for-profits. The bill would apply equally to both for-profits and nonprofits, even though certain criteria for prioritization of the grants may apply with greater effect against the for-profits.^{1/} Therefore, there does not appear to be an equal protection problem. Since the bill provides the for-profits with rights rather than depriving them of rights, there does not appear to be a substantive due process problem. There are no contracts that would be changed or violated by including the for-profits so there does not appear to be an impairment of contracts problem.

^{1/}These include the consideration of the ability of the construction project to be self-supporting and the access to other sources of funding.

Senator Pat Pourchot
April 16, 1991
Page 2

The extension of grant eligibility to for-profits seems to be a reasonable exercise of the state's police power to promote and protect the health and welfare of the citizens of the state. The inclusion of the for-profits in the bill also appears to serve a public purpose and to be reasonably related to the purpose of the bill. The for-profit health facilities certainly constitute a part of the provision of health care in this state. It is certainly reasonable for the legislature to determine that the bill should be extended to for-profits in order to completely address the general improvement of health care in the state, and, thus, to promote the health and welfare of state residents.

In conclusion, there does not appear to be any reason why the bill could not be extended to for-profit health facilities.

If I may be of further assistance, please advise.

TLS:lmb
91-126.lmb

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 16, 1991

SUBJECT: Limitation of CSSB 67 (HES) to health facilities that do not have more than 200 beds

TO: Senator Pat Pourchot
Chair, Senate Finance Committee
Attn: Susie

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether it is constitutional to limit the application of CSSB 67 (HES) ("the bill") to health facilities (whether or not limited to nonprofit health facilities) that do not have more than 200 beds ("excluded health facilities"). The bill presently authorizes the making of construction grants to nonprofit health facilities in order to improve health care in the state.

It is my understanding that the number of beds in a facility is generally indicative of the size of the facility. Whether or not a limitation based on the size of the facility is constitutionally permissible requires an examination of whether or not the distinction violates the equal protection provision of the Alaska constitution.^{1/}

The right of a health facility to apply for and possibly receive a health facility construction grant is not a fundamental constitutional right or even a significant right. In addition, the excluded health facilities would not qualify as a suspect class. Therefore, the minimum rational basis test for equal protection in Alaska will be applied. See Barber v. Municipality of Anchorage, 776 P.2d 1035, 1039 (Alaska 1989).

Under the rational basis test, the bill with the limitation will be upheld as long as (1) the statutory purpose is legitimate and within the power of the state; (2) the means chosen substantially further the legislative purpose; and (3) the state interest in its chosen means outweighs the excluded health facilities' interest in applying for and possibly receiving a construction grant. See Barber at 1039.

^{1/}Since the minimum level of equal protection scrutiny in Alaska is more demanding than the minimum federal test, this memo will approach this question by examining whether the classification will satisfy Alaska's test. See Barber v. Municipality of Anchorage, 776 P.2d 1035, 1039 (Alaska 1989).

Senator Pat Pourchot

April 16, 1991

Page 2

With regard to the first and second criteria, the state has a legitimate social interest in the improvement of health care facilities in the state. Under the bill, construction grant applications from nonprofit health facilities would be evaluated and then prioritized according to the criteria established in the bill. This criteria includes the degree of threat to the health or safety of facility occupants. Each year certain applicants with the highest priority would be funded. The making of construction grants based on a prioritized approach certainly appears to be a carefully planned method that would substantially further the improvement of health care in the state.

Although the bill with the limitation may be underinclusive because it does not allow all nonprofit health facilities to apply, a statute is not invalid merely because it might have gone further than it did. A legislature need not eliminate all problems at the same time; it may attack a problem step-by-step. Katzenbach v. Morgan, 16 L.Ed.2d 828, 839 (1966); Barber at 1039-40.

Assuming that the 200-bed cut-off has a rational basis for being used (e.g., a reasonable point for distinguishing between large and small facilities), the legislature may decide to limit the coverage of this bill so that it addresses only a part of the improvement of health care facilities in the state (for example, small facilities). Or the legislature may determine that construction assistance is not needed for the excluded facilities. In other words, the legislature may tailor its bill to the situation if there is a rational basis for doing so.

With regard to the third criterion, the interest of the state in improving the health care of its citizens appears to be an important interest of the state which is well within its police power to provide for the health and welfare of its citizens. The promotion of the health of state residents is a significant and traditional concern of state governments. Contrasted with this, the interest of the excluded health facilities in applying for and possibly obtaining construction grants appears to be much less important. A health facility is not generally entitled to state economic assistance to run its facility. Therefore, the state's interest appears to outweigh the interest of the excluded health facilities.

In conclusion, if the legislature determines that it wants to limit the application of the bill to health facilities having less than a certain number of beds, and if there is a reasonable basis for drawing the distinction, it appears that the legislature could do so without violating the state or federal equal protection provision. This conclusion would apply whether or not the bill allows both profit and nonprofit health facilities to apply for the grants.

If I may be of further assistance, please advise.

TLB:pl
91-265.plm



From The
SENATE
FINANCE COMMITTEE

DATE: 4/29/91
TO: Lynn Barnes
Legal Services
FROM: Vicki (4935)
SFC Room, 5th Floor
(by US Flag)
Capitol
RE: CS SB 67 (Fin)

Please run the above-referenced legislation in final, incorporating the amendments* as noted, and deliver to me ASAP.

This legislation was reported out of SFC this morning.

THANX!

* Jones Am's #1-#5
Adams Am #6
Duncan Am #7

WORK DRAFT

WORK DRAFT

~~WORK DRAFT~~
~~WORK DRAFT~~
~~WORK DRAFT~~
CS0085V

Barnister
4/11/91

BLANK CS
OFFERED BY
SPONSOR

CS FOR SENATE BILL NO. 67 (Fin)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS JONES, Zharoff, Menard

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

5 (d) The grant application must include

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

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

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

16 (1) an architect licensed under AS 08.48;

17 (2) an engineer licensed under AS 08.48;

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

19 (4) a representative from the department;

20 (5) a representative of ^[NON-PROFIT] a health facility;

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

22 (7) a member of the general public.

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

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

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

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

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

29 (2) with regard to the plans reviewed under (1) of this subsection, establish and
30 transmit to the department a revised and updated five-year construction grant schedule that
31 establishes the priorities among the proposed health facility construction projects and serves the

1 best interest of the state and the municipality or area in which the health facility is located.

2 (b) The board shall establish by regulation its criteria for establishing the priorities under

3 (a) of this section. The criteria must include at least the following factors:

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

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

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

8 (4) access to other sources of funding;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) An applicant under AS 18.25.011 may appeal an adverse decision of the board under
28 (a) of this section by filing a written notice of appeal with the commissioner within 15 days after
29 the date of the board's decision. The notice of appeal must state the legal and factual basis for
30 the appeal and the precise relief sought. The failure of the applicant to include an issue in a
31 notice of appeal constitutes a waiver of the right to have the issue considered. Not later than 10

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

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

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

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

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

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

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

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

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

1 (C) the reporting requirements of AS 36.05 and AS 36.10; and
2 (D) 42 U.S.C. 2000a - 2000h-6 (Civil Rights Act of 1964), 29 U.S.C. 621-
3 634 (Age Discrimination in Employment Act of 1967), 7 U.S.C. 2027 (Food Stamp Act
4 of 1977), and the department's requirements for implementation of the federal statutes
5 listed in this subparagraph;

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

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

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

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

18 (1) award of the grant; or

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

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

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

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

29 Sec. 18.25.027. GRANT APPROPRIATIONS. Within the general appropriation bill
30 submitted to the legislature under AS 37.07.020, the governor shall include an appropriation for
31 health facility construction grants in the succeeding fiscal year as determined by the priority list

1 and budgets transmitted to the governor under AS 18.25.017.

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

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

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

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

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

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

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

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

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

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

31 (3) "health facility" means a nursing home or a facility that provides

1 hospitalization for inpatient medical and surgical care of acute illness or injury or obstetric care.

2 **[NON-PROFIT DEFINITION]**

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

4 Sec. 18.25.100. REGULATIONS. The department shall adopt regulations to implement
5 this chapter.

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

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

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

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

Alaska State Legislature

~~4/23/91~~
~~Jones Amends HES to S~~
ADOPTED
by SFC

Chair, Resources Committee
Vice-chair, Transportation Committee
Member, Rules Committee
Member, Committee on Committees

District A
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Senator Lloyd Jones

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MEMORANDUM

To: Senator Pat Pourchot, Chair
Senate Finance Committee

From: Senator Lloyd Jones 

Date: April 23, 1991

Subj: Proposed Amendments to Senate Bill 67

As discussed in the last Senate Finance Committee hearing on CSSB 67 (HES), here is a list of amendments in response to committee members' concerns:

UNFAIR COMPETITIVE ADVANTAGE NON-PROFIT VS. FOR-PROFIT

There were several ideas suggested regarding the solution to this issue. We feel the committee should adopt the blank CS offered by the sponsor. The CS deletes all reference to non-profits, thereby allows all health facilities, as defined in the bill, to apply for grants. The following amendments should be incorporated into the blank CS and all references are to the blank CS.

BOARD COMPOSITION

Senators Kerttula and Uehling suggested we add more administration representation to the board.

Am #1 ~~Suggested amendment: Page 2, line 22:~~

Delete "a member of the general public"

Insert "a representative of the office of management and budget in the Office of the Governor"

REGIONAL REPRESENTATION

Senator Kerttula suggested membership of the board reflect regional representation.

Am #2 ~~Suggested amendment: Page 2, following line 22:~~

Insert a new subsection to read:

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

Reletter the following subsections accordingly.

STRENGTHENED CRITERIA

Even though the blank CS offered by the sponsor allows for both for-profits and non-profits to apply for grants, we believe in either version it is necessary to strengthen the criteria section of the bill. The original intent of the bill was to help facilities which were faced with life-threatening physical plant code violations, therefore we suggest the following amendments:

Am #3 ~~Page 3, following line 1:~~

Insert a new subsection to read:

"(b) The primary criteria for establishing the priorities under (a) of this section are
(1) the degree of threat to the health or safety of facility occupants; and
(2) the degree of potential harm to building integrity as it affects the building's ability to support health care functions in a cost-effective manner."

Reletter the following subsections accordingly.

Page 3, line 2:

Delete "its"
Insert "additional"

Page 3, lines 4-6:

Delete all material.

Renumber the following paragraphs accordingly.

ACCESS TO OTHER SOURCES OF FUNDING

There was some question regarding whether or not the board will be able to determine whether or not a facility has access to funding from its parent company. The following amendment addresses that concern:

Am #4 **Page 3, line 8, following "funding":**

Insert ", including funding from the parent corporation of the health facility, if applicable"

GRANT AWARD

Senator Kerttula and Senator Duncan expressed concern over the state/local match formula in the bill. Senator Kerttula suggested the state's share should be 75% rather than 80%. Senator Pourchot was also concerned over the in-kind contribution. He did not want to allow only the donation of land to satisfy the match.

Am #5 **Suggested amendment: Page 7, following line 23:**

Insert a new subsection to read:

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

Reletter the following subsections accordingly.

Page 7, line 24:

Delete "The"

Insert "Except as limited by (e) of this section, the"

Page 8, line 3:

under AS 18.25.021, the state shall pay [80] 75 percent of the total costs of construction incurred for...

with (Orig draft of this language included "with")
per D. Y. Bannister
4/29/91

4/11/91

7-LS0085G.1
Bannister
04/10/91

~~ADMITTED~~
~~4/11/91~~

~~AMENDMENT #6~~

OFFERED IN THE SENATE
TO: CSSB 67(HES)

BY SENATOR ADAMS

Page 9, line 2, following "obstetric care":

Insert ", but does not include a nursing home or facility that has more than 200 beds"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DUNCAN

TO: CSSB 67(HES)

Page 9, following line 14:

Insert a new section to read:

**** Sec. 5. RETROACTIVE GRANTS.** (a) A grant may be made under AS 18.25.011 - 18.25.035, added by sec. 1 of this Act, for construction costs that are incurred before the effective date of this Act and if the construction project is begun or completed before the effective date of this Act and if the project began after December 31, 1985.

*(not necessary
does not
change meaning)
y/ Bannister
4/29/91*

(b) Notwithstanding AS 18.25.011(b), the certificate of need required for a construction project described in (a) of this section must have been in effect when the project was begun.

(c) The determination of the priority of a construction project described in (a) of this section shall be based on the circumstances existing when the construction project was begun.

(d) If the grant is for construction costs described in (a) of this section, the written agreement required under AS 18.25.025 may not include the provisions contained in AS 18.25.025(b)(1) - (11), (13), and (14).

(e) Notwithstanding AS 18.25.029, for each grant described in (a) of this section, the state shall pay ~~80~~ percent of the costs of construction incurred for the project by the grantee before the effective date of this Act.

(f) Notwithstanding AS 18.25.031, after the effective date of the agreement for a grant under AS 18.25.011 - 18.25.035, the Department of Health and Social Services shall advance the entire grant to the grantee if the grant is authorized by (a) of this section."

Renumber the following bill section accordingly.

4-12-91
Prepared by Pourchot
to reflect a suggestion
from the Dept.'s
position paper.

A M E N D M E N T

Offered to the Senate Finance Committee at the request of HSS

TO: CSSB 67 (HES)

Page 9, After line 12

New Section 4:

Sections 1 and 3 are repealed July 1, 1996.

(Subject to technical change by Legal Services)

4-12-91
AA 7 6770

AMENDMENT

Offered to the Senate Finance Committee by Senator Kerttula

TO: CSSB 67 (HES)

Page 8, on Line 4

Delete [80%]

Add 75%

Jones

4-12-91

Incorporated
in draft
as 4/11/91

**Technical Amendments
SB 67**

Page 5, line 8 ...those issues and recommend a decision to the [board] commissioner.

Page 5, line 17 ...or the [board] commissioner under (b) of this section to the superior court...

Explanation:

In the previous drafts we had the hearing officer's appeal decision going back to the board, however, after discussion with the Department and the Senate HESS Committee we changed it to go back to the commissioner. In making this change, we inadvertently failed to change all the references. This discrepancy was brought to our attention after the bill passed the Senate HESS Committee.

DRAFT

Position Paper
Senate Bill CSSB 67

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

While the Department of Health and Social Services supports in general terms Committee Substitute for Senate Bill 67 (CSSB67), some important changes are required before we can actively provide our support. These changes are:

1. Assurance that adequate ongoing funding is available to develop and maintain the ongoing program.
2. Allow the Department to charge up to 1.5% in any one year in which an \$8 million or more appropriation is made to cover additional administrative and contractual cost potentially associated with the larger volume of work, and/or complexity implicit in the larger appropriation.
3. A mechanism needs to be put in SB 67 to end the existence of the Health Facilities Review Board, such as "sunsetting" it in five years.

If the changes that are outlined in items 1-3 above are made to Senate Bill 67, the Department of Health and Social Services will actively support it. Also, the Department feels that the fiscal note that has been developed is the minimum required to carry out the provisions and requirements of this legislation.

Recommended by:

Jarret Clarke

Jarret Clarke
Director
Division of Administrative Services

Date:

4/12/91

Approved by:

Theodore A. Mala, MD, MPH
Commissioner
Department of Health and Social Services

Date:

April 11, 1991

PACE (The Public Awareness Committee for the Environment)

Written Testimony on Senate bill #209

Senate Finance Committee

FINANCE

PACE feels it is wrong for the sum of \$5,000,000.00 to be appropriated from the general fund making a supplemental appropriation to the Office of the Governor for an Arctic National Wildlife Refuge' national education effort to gain approval for the opening of the Arctic National Wildlife Refuge to oil and gas development for the following reasons.

1. PACE feels if the money is appropriated it would not be an educational effort where both sides of the issues were presented, but a complete brainwash and snow job to benefit only the Commercial views of the oil and gas companies. Education means exploring all sides of the issue, not just one short sided view.

PACE asks you this:

2. In your educational packet would you mention it would reduce the calving of the Porcupine herd by 40% that the Gwich'in natives have relied on for their subsistence survival for thousands of years? Would you mention that at this time and place a person can go days without seeing another human being? Would you mention that this would certainly not be the case if oil and gas exploration were allowed to develop? Would you mention that in establishing the Arctic National Wildlife Refuge' Congress set forth these four major purposes for which the refuge "SHALL BE MANAGED?"

A. "to conserve fish and wildlife populations and habitats in their natural diversity, including but not limited to the Porcupine caribou herd?"

B. "To fulfill International Treaty Obligations with respect to fish and wildlife?" (This needs to be looked at closely.)

C. "To provide the opportunity for continued subsistence uses by local residents?"

D. "To ensure water quality?"

3. Will you mention the recent EPA fines of \$300,000.00 against Arco on the North Slope and the \$500,000.00 fine against Tesoro on the Kenai Peninsula because they chose to ignore the environmental rules and regulations of our state? Because the state failed to enforce these rules and regulations properly EPA was forced to step in and enforce them? Do you honestly think it will be any different in the Arctic National Wildlife Refuge? We think not!!!!

4. The mere presence of the massive oil and gas development complex in the heart of this Arctic Eden, spewing out toxic air and water pollution, blanketing the landscape with roads, airports, tanks, buildings, wells and waste pits would be an ecological disaster. Please educate yourselves on this matter before appropriating the 5 million dollars!

(continued)

5. We ask you to come to the Kenai Peninsula where we can educate you on the water quality and the lack of it due to the development of oil and gas and the toxics that they illegally disposed of which has polluted many drinking wells and ruined many peoples lives and dreams of living in our beautiful state! One example is, Tesoro's contamination has flowed under the hiway and contaminated their neighbors' well which happens to be Phillip Petroleum! Another example is, the lawsuit that was won by local residents against Unocal for the illegal dumping of toxics waste at the Westpoppy Lane Dump Site. The Tesoro plant at one time had six feet of contaminated oil floating on top of their pond. There is still a depth of three feet to be cleaned up. Would these be mentioned?

6. Brown, black and polar bear, wolf, moose, Dall sheep, musk ox, wolverine, snow goose, snowy owl, peregrine falcon, golden eagle, the 200,000 strong Porcupine caribou herd, the 300,000 snow geese that migrate there every year, and many other species can be found in the Arctic National Wildlife Refuge'. Lets keep it that way!!!!

7. If the senate wants to take 5 million dollars toward education, lets put it toward the study of alternative energy purposes, educating the people on conservation and recycling efforts, and compiling an educational curriculum on toxics and contaminated water so the future generations can learn how to correct this terrible problem that our generation has made and will be leaving for them to solve.

8. One last educational note: 100 gallons of recycled oil saves 65 gallons of new oil. Maybe if we took that 5 million dollars and built an educational experimental oil-recycling facility within the state of Alaska there would be no need for the opening of The Arctic National Wildlife Refuge to oil and gas exploration! Think about it! Think hard about it, and please vote NO on Senate bill #209!

PACE adamantly opposes House bill #209!

Thank you for your time and effort in this very touchy matter.

Patricia Baroutte

Patricia Baroutte
President, PACE

Ketchikan General Hospital

3100 TONGASS AVE.
KETCHIKAN, ALASKA 99901-5746
PHONE 907-225-5171
FAX 907-225-2173

April 11, 1991

FAX 465-2069

Senator Pat Pourchot
Room 504, Capitol
Juneau, AK 99811

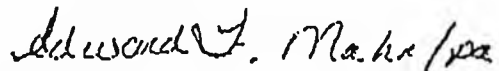
Re: Senate Bill 67

Dear Senator Pourchot:

We at Ketchikan General Hospital support Senate Bill 67 with all hospitals eligible for constructions funds with a 25% match from the community. We strongly urge to you to support this bill.

Thank you for your consideration.

Sincerely,



Edward F. Mahn
Administrator

pa

KGH

*Kodiak Island Borough**Re: SB 67**MEMORANDUM*

TO: Alaska State Legislature
Senate Finance Committee

FROM: Jerome M. Selby, Mayor
Kodiak Island Borough

DATE: April 11, 1991

RE: TESTIMONY - Senate Bill 27

I want to commend Senator Jones and the rest of the Legislature for proposing a system to deal with health care facility needs for the people of the State of Alaska well into the future. This is a good bill and the concerns that we had raised earlier have been addressed in subsequent amendments. At this time, we would wholeheartedly support the passage of this bill and would encourage you to do so. This bill addresses the current problem of many facilities in need of replacement or substantial renovation. When implemented, it will eventually correct the unfortunate history of the last seven years in the State of Alaska where no health care facilities have been funded. The seven year gap is certainly not the only factor, but it obviously has contributed to the present situation where health care availability in the state of Alaska is ranked as the worst in the 50 states of the United States of America. Being ranked 50th distresses me a great deal when we are in the process of attempting to reach visitors to come to Alaska, to encourage new business to come to Alaska, and to encourage economic growth and development in Alaska. The publication of this information in Newsweek Magazine, Parade Magazine, and other national publications last fall was especially detrimental to the interests of the State of Alaska. It is high time we did something to correct that situation. I think that this bill certainly is a step in the right direction. Construction of good quality facilities is the key to developing a top notch health care delivery system throughout the State of Alaska, where any individual, resident or visitor, can go with confidence to the nearest health care facility and be assured that he will be referred and moved quickly within the system to the facility where he will receive the level of health care that he needs. Obviously, bandaids can be done anywhere, but brain surgery must be transferred quickly to the higher level technical facility in Anchorage, or possibly even Seattle. This is the kind of a system that the people in the state of Alaska need and deserve, and it is the responsibility of the state via the constitution, to provide

Page 2
SB 27 Testimony

for the general welfare of the people. I would argue that health care is a general welfare issue where the state needs to take the lead.

I would like to address the 20% match provision in the bill. I think the 20% match is livable, but it is on the high upper end of what's possible, particularly in smaller communities. If the match requirement is any higher than 20%, I suspect that the intention of the bill will be thwarted and all of the smaller communities the size of Kodiak or smaller may be unable to participate in the program in the future. The reason for my concern is that the tax base and the ability of these communities to raise more than a 20% match is just not feasible. Let me give you the specifics of what a 20% match means in Kodiak's case as an example. We're looking at a \$19 million dollar facility. A 20% match is in the range of \$4 million. We're actually being asked to come up with \$5 million with the funding bill that's before you now. If we were to raise \$5 million through a bond, we would have to pay back approximately \$18 million on a 20 year bond. Therefore, our annual debt service payment would be close to one million dollars per year. One million dollars per year, even on Kodiak's tax base, is 2 mills of tax levy just to pay the debt service on this bond. Two mills of tax levy may not seem like much, but at a time when funds are being reduced both at the federal and state level, and mill rates are having to go up to keep in place the current educational and other programs that we have, two mills becomes the straw that breaks the camel's back and makes the feasibility of passing a bond levy for 2 mills with the voters virtually impossible. Therefore, I would urge you to not change the 20% match option, particularly for the smaller communities. If its of great concern to the legislature, then I would suggest you make some sort of a criteria for municipalities with populations in excess of 20,000 people, perhaps you could require a higher percentage, and for those with fewer than 20,000 people you would leave it at the 20% match level. Just some suggestions. I hope that you will leave the 20% as is and pass the bill. We can then get on about developing a positive and effective health care delivery system in the state of Alaska. Thank you.

H-12-91
Knudson

ALASKA STATE HOSPITAL & NURSING HOME ASSOCIATION
STATEMENT

SUPPORT- SB 67 - HEALTH FACILITY CONSTRUCTION GRANTS
SB 111 - APPROPRIATIONS: SEWARD HOSPITAL; KODIAK ISLAND
HOSPITAL/LONG TERM CARE FACILITY; KETCHIKAN
GENERAL HOSPITAL/LONG TERM CARE FACILITY

MARCH 1991

The 1981 Legislature authorized and funded a study by the Department of Health and Social Services of the plant condition and functional adequacy of 15 rural hospitals and nursing homes in Alaska.

Anchorage and Fairbanks hospitals were not included. Valley Hospital, Palmer, and Sitka Community Hospitals did not participate as they were currently under construction or reconstruction in 1982. Denali Center in Fairbanks did not exist at this time.

Overview of Surveyed Facilities -

A study team evaluated the adequacy of the physical facilities at each hospital or long term care unit. A number of serious problems and deficiencies were discovered.

Generally, the deficiencies observed in the health care facilities surveyed are due to the advances and changing techniques in the medical field, coupled with more stringent building, fire and life safety codes which have been adopted over the last few years.

1982 Prioritization of Surveyed Hospitals and Nursing Homes -

In conducting the inventory and evaluation study of the 15 hospitals and long term care facilities in 1982, architectural consultants identified six facilities which were in greater need of immediate attention than others, due to their more severe physical and functional deficiencies. The Department assembled a committee to review the report.

This committee consisted of one member from:

- The Alaska Medical Facility Authority,
- The Alaska State Hospital Association,
- Southeast Alaska Health Systems Agency, Inc.,
- South Central Health Planning and Development, Inc.,
- The Medical Care Advisory Committee, and
- The Statewide Health Coordinating Council.

The ranking provided by the committee was based only upon the relative severity of all physical and functional deficiencies found at each facility and did not consider other factors such as facility utilization or population trends.

The Committee ranking was as follows:

- *1. Cordova Community Hospital and Long Term Care Facility

- *2. Petersburg General Hospital and Long Term Care Facility
- 3. Seward General Hospital
- 4. Kodiak Island Hospital and Long Term Care Facility
- 5. Wesleyan Nursing Home, Seward
- *6. Wrangell General Hospital
- *7. South Peninsula General Hospital and Long Term Care Facility
- 8. Ketchikan General Hospital and Island View Manor
- *9. Central Peninsula General Hospital
- *10. Bartlett Memorial Hospital
- 11. Valdez Community Hospital
- 12. St. Ann's Nursing Home, Juneau
- *13. Norton Sound Regional Hospital

* Completed (Central Peninsula and Bartlett Memorial utilized local bonding)

SB 67, Health Facilities Construction Process/Grants -

SB 67 creates the Health Facility Review Board, composed of seven members appointed by the Governor within the Department of Health & Social Services. The Board will advise the Department in establishing priorities for possible capitol construction grants for non-profit health facilities.

By October 15 of each year the Department shall submit to the Governor and within the first ten days of each regular legislative session, a construction grant schedule with budgets. Each facility applying for grants will have been required to have a Certificate of Need and meet all provisions of SB 67.

SB 111, Health Facility Capitol Construction Grants Kodiak, Ketchikan, & Seward - SB 111 appropriates:

Kodiak Island Borough Hospital/LTC	- \$14,250,000.00 (State Grant)
Kodiak Borough Appropriate	- \$ 4,750,000.00 (Local Match)
Total	- \$19,000,000.00
Seward General Hospital	- \$ 8,603,438.00 (State Grant)
City of Seward Appropriate	- \$ 2,867,813.00 (Local Match)
Total	- \$11,471,251.00
Ketchikan General Hospital	- \$14,063,678.00 (State Grant)
City of Ketchikan Appropriate	- \$ 4,687,893.00 (Local Match)
Total	- \$18,751,571.00

FOR MORE INFORMATION CONTACT:

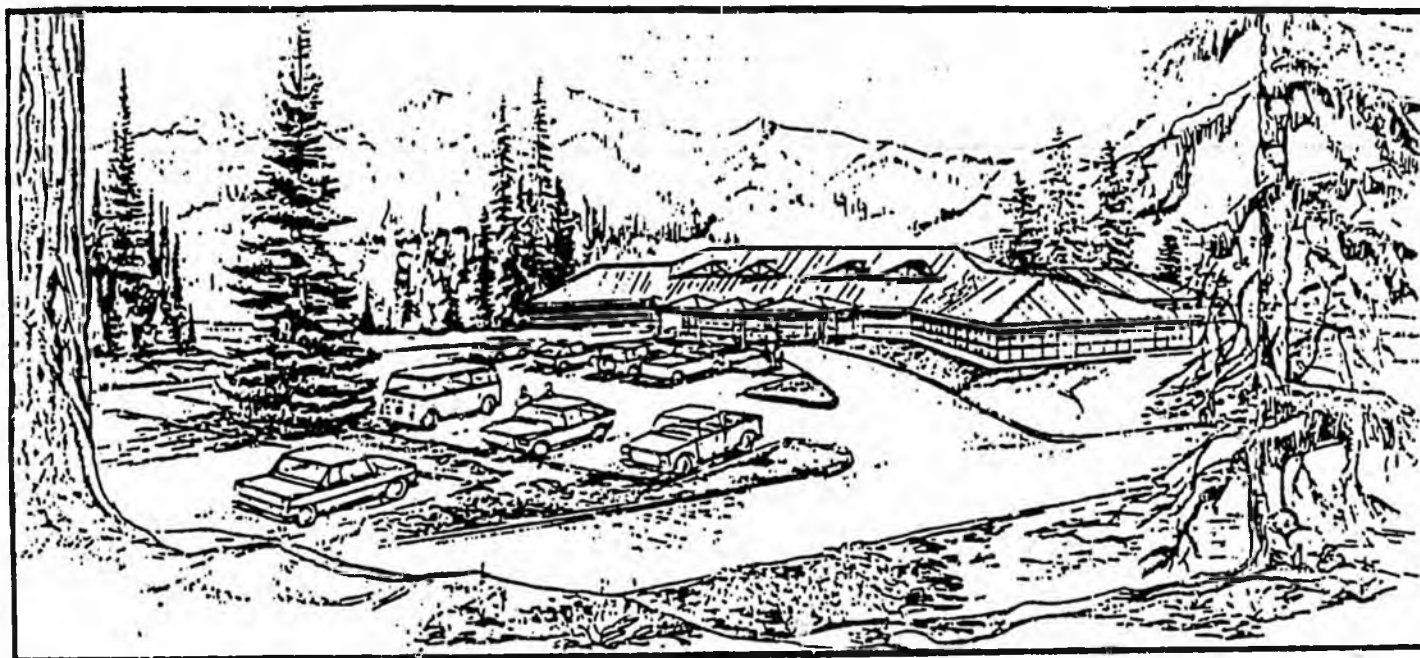
Harlan Knudson - 586-1790, Juneau
 Alaska State Hospital & Nursing Home Association
 319 Seward, #11; Juneau, Alaska 99801

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THE FOLLOWING DOCUMENT HAS NOT
BEEN FILMED BUT IS AVAILABLE IN THE
ORIGINAL FILE.

PLEASE MICROFILM TOP PAGE ONLY

**KODIAK ISLAND (BOROUGH) HOSPITAL
AND CARE CENTER**



REPLACEMENT FACILITY PROPOSAL