HOUSE BILL REPORT
HB 1846

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to the health care facilities authority.

Brief Description: Requiring participants seeking financing from the health care facilities authority to agree to return anticipated savings to patients in the form of lower rates or avoidance of rate increases.

Sponsors: Representatives Cody, Sommers, Hunter, Fromhold, Kenney, Moeller, Simpson and Ormsby.

Brief History:
Committee Activity:
Health Care & Wellness: 2/5/07, 2/26/07 [DPS].

Brief Summary of Substitute Bill

- Modifies regulation of the Health Care Facilities Authority (HCFA) by adopting various provisions in HCFA rules and by adding requirements, including specifying that loan participants must provide sworn public benefit certifications.
- Establishes a debt limit of $5.5 billion for the HCFA.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Cody, Chair; Morrell, Vice Chair; Campbell, Green, Pedersen, Schual-Berke and Seaquist.

Minority Report: Do not pass. Signed by 6 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Barlow, Condotta, Curtis and Moeller.

Staff: Chris Cordes (786-7103).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Health Care Facilities Authority

Since 1974, the Health Care Facilities Authority (HCFA) has been authorized to issue bonds for the construction, purchase, lease, or use by participants of health care facilities. Participants may be political subdivisions of the state or nonprofit health care facilities.

The HCFA is organized as a political subdivision of the state with the following members: the Governor or designee, who is chair; the Lieutenant Governor, the Insurance Commissioner or designee, the Secretary of Health, and one member of the public.

Issuance of HCFA Bonds

The HCFA receives requests for providing financing bonds, investigates and determines the necessity and feasibility of providing the bonds, and if deemed necessary or advisable for the benefit of the public health, adopts a financing plan, and issues and sells bonds. If the project requires a certificate of need, a financing plan may not be adopted until the certificate has been issued.

Under HCFA rules, an applicant seeking financing must furnish specified information in a loan application, including:

- information about the applicant, including certain officers, and other specified information;
- a description of the project, including the status of planning and certificate of need review;
- cost of the project and sources of funding;
- feasibility studies and other reviews; and
- an estimate of the aggregate savings to be realized over the life of the project because of HCFA financing with tax-exempt bonds.

The rules specify that the HCFA may approve an application if it determines that:

- the project is necessary or advisable for the benefit of the public health;
- the applicant can reasonably be expected to achieve successful completion of the project;
- the project is economically feasible;
- the project will carry out the purposes of the financing law; and
- the applicant has satisfied the HCFA that substantially all savings realized will be passed on to patients.

Bonds issued by the HCFA are not obligations of the state, but are paid from special funds held by the HCFA. The HCFA is not subject to a statutory debt limit.

Public Meetings

The HCFA provides for public participation in its meetings under rules establishing deadlines for requesting permission to make presentations and other related requirements.

HCFA Administrative Costs

The HCFA may adopt fees that applicants pay for HCFA services, including investigation, feasibility studies, the expenses of issuing bonds, and other charges. All expenses of the HCFA must be paid from these fees.

Recent HCFA Rule-Making Activity

In September 2006, the HCFA filed a preproposal statement of inquiry for possible rule-making. It cited a purpose of updating the rules to make the bond issuance process more streamlined and efficient, and stated the intention to use a collaborative rule process. Draft rules were presented to the HCFA, but have not been adopted.

Summary of Substitute Bill:

The law regulating the Health Care Facilities Authority (HCFA) is modified by adopting some provisions in HCFA rules and by adding requirements, including that participants provide sworn public benefit certifications that describes the means by which the benefits of the financing are passed on to the public.

Applications for Financing

An applicant seeking financing with the HCFA must furnish at least the following information in a loan application:
- identification of the applicant and its legal structure;
- a description of the project, including requested borrowing, the status of planning and certificate of need, the cost, revenues to be derived, feasibility studies, if any, and proposed security;
- the debt to be refinanced;
- finances of the applicant;
- pending litigation relevant to the applicant's ability to repay the assistance;
- existing facilities, expansion plans, and statistics on bed occupancy; and
- an estimate of the aggregate savings to be realized over the life of the project because of HCFA financing with tax-exempt bonds, and the means proposed to pass the savings on to the public.

As part of its application review, the HCFA must review whether the applicant has complied with requirements under past financing agreements with the HCFA to pass on savings to the public.

The HCFA may approve an application and adopt a bond resolution if, among other things, it determines that the applicant will provide sworn public benefit certifications as required by the HCFA.

Benefits to the Public

Participants awarded financing must provide sworn public benefit certifications, as required by the HCFA, that describe the means by which the participant has passed on benefits to the public through (1) foregone increases in rates or decreases in rates; (2) provision of services to the underserved; (3) provision of charity care above the amounts required by law; or (4) other reasonable means allowed by the HCFA. The certification must also identify improvements in the quality of health care resulting from the project. These certifications are public records.

Public Meetings

The HCFA is required to encourage and provide for public participation in its meetings and project application review under rules establishing time at each meeting for public testimony and reasonable deadlines for submitting written comments or notice of testimony.

Comments received by the HCFA on a specific application for financing must be posted on the HCFA's website at least 10 days before a meeting at which the HCFA will act on the resolution, and the HCFA must consider the comments in reviewing a resolution.

Administrative Costs

The HCFA's authority to set applicant fees may take into consideration, in addition to current factors, the evaluation and verification of sworn public benefit certifications.

Debt Limit

The HCFA's debt limit is set at $5.5 billion. The calculation of the debt limit includes the initial principal amount of an issue and may not include certain interest payments.

Application

These provisions apply retroactively to applications for financing that have been filed with the HCFA but for which financing has not been awarded by the bill's effective date.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) replaces the list of information that loan applicants must provide with a more detailed list similar to the list in the HCFA's current rules; (2) deletes a requirement for applicants to provide a plan for returning savings to patients and, instead, requires participants to provide sworn public benefit certifications with certain requirements; (3) clarifies that website posting of public comments must occur 10 days before action on a resolution, rather than on an application; and (4) increases the debt limit from $4 billion to $5.5 billion.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Nonprofit organizations should be formed to benefit the public. There should be some way to know that the nonprofit is doing so. But some nonprofits seem to operate like the private sector. An example is CEO salaries. This bill will help keep nonprofits responsible.

(No position) Federal subsidization of the bonds results in a 2 percent reduction in costs compared to commercial loans. Participants under the HCFA's lending program have all been nonprofits. This program assists many small facilities to expand and create a larger capacity to serve the underserved. Examples include dental clinics in Yakima and a new dialysis facility. The statute requires the avoided cost to be passed on to the public. The HCFA is beginning work on a new process for this and new rules. There is now $3.4 billion in outstanding loans and another $316,000 is expected to close soon. The debt limit in the bill is nearly met now; under the bill, the program would shut down this year. The automatic loan default provision may impair the bond rating and ability to obtain letters of credit. The HCFA is a small agency with four FTE's and a $700,000 annual budget. If the HCFA must provide annual verification of savings covenants, it would require additional staff and consultants. It changes the nature of the agency from a financing conduit to a regulatory agency. The agency would need to increase its fees substantially, raising a I-601 issue and requiring the participants to divert money away from the projects.

(Opposed) The purpose of the law was to insure that medical facilities are available. If facilities cannot use charity care and bad debt to show benefit to the public, this will make it difficult to implement a savings covenant. It is not possible to verify that a rate decrease resulted from savings or that a price increase has been foregone. It is also difficult to estimate savings over the life of the loan. Private investors will leave the market because they cannot be assured of tax exempt status. Having a debt ceiling will increase the interest rate and drive up the costs of loans. This is likely to reduce the extra programs such as children's programs or crisis intervention. The HCFA provides a valuable service, but the bill would make the program unworkable.

Persons Testifying: (In support) Kent Davis.

(No position) Donna Finkle and Dan Gotlieb, Washington Health Care Facilities Authority and Gottlieb, Fisher, Andrews.

(Opposed) Jeff Veilleux, Swedish Medical Center; Len McComb, Washington State Hospital Association; and Judy Swain, MultiCare Health System.

Persons Signed In To Testify But Not Testifying: None.