

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 10

Short Title: CON Modifications.

(Public)

Sponsors: Senators Daniel; Perdue and Tally.

Referred to: Judiciary I.

January 28, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE CERTIFICATE OF NEED LAW.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 131E-175 reads as rewritten:

5 **"§ 131E-175. Findings of fact.**

6 The General Assembly of North Carolina makes the following findings:

7 (1) That the financing of health care, particularly the reimbursement of
8 health services rendered by health service facilities, limits the effect of
9 free market competition and government regulation is therefore
10 necessary to control costs, utilization, and distribution of new health
11 service facilities and the bed complements of these health service
12 facilities.

13 (2) That the increasing cost of health care services offered through health
14 service facilities threatens the health and welfare of the citizens of this
15 State in that citizens need assurance of economical and readily
16 available health care.

17 (3) That, if left to the market place to allocate health service facilities and
18 health care services, geographical maldistribution of these facilities
19 and services would occur and, further, less than equal access to all
20 population groups, especially those that have traditionally been
21 medically underserved, would result.

22 (3a) That access to health care services and health care facilities is critical
23 to the welfare of rural North Carolinians, and to the continued viability

1 of rural communities, and that the needs of rural North Carolinians
2 should be considered in the certificate of need review process.

- 3 (4) That the proliferation of unnecessary health service facilities results in
4 costly duplication and underuse of facilities, with the availability of
5 excess capacity leading to unnecessary use of expensive resources and
6 overutilization of health care services.
- 7 (5) Repealed by Session Laws 1987, c. 511, s. 1.
- 8 (6) That excess capacity of health service facilities places an enormous
9 economic burden on the public who pay for the construction and
10 operation of these facilities as patients, health insurance subscribers,
11 health plan contributors, and taxpayers.
- 12 (7) That the general welfare and protection of lives, health, and property
13 of the people of this State require that new institutional health services
14 to be offered within this State be subject to review and evaluation as to
15 need, cost of service, accessibility to services, quality of care,
16 feasibility, and other criteria as determined by provisions of this
17 Article or by the North Carolina Department of Human Resources
18 pursuant to provisions of this Article prior to such services being
19 offered or developed in order that only appropriate and needed
20 institutional health services are made available in the area to be
21 served."

22 Sec. 2. G.S. 131E-176 reads as rewritten:

23 **"§ 131E-176. Definitions.**

24 As used in this Article, unless the context clearly requires otherwise, the following
25 terms have the meanings specified:

- 26 (1) 'Ambulatory surgical facility' means a facility designed for the
27 provision of ~~an~~ a specialty or multispecialty ambulatory surgical
28 program. An ambulatory surgical facility serves patients who require
29 local, regional or general anesthesia and a period of post-operative
30 observation. An ambulatory surgical facility may only admit patients
31 for a period of less than 24 hours and must provide at least ~~one~~ two
32 designated operating ~~room~~ rooms and at least one designated recovery
33 room, have available the necessary equipment and trained personnel to
34 handle emergencies, provide adequate quality assurance and
35 assessment by an evaluation and review committee, and maintain
36 adequate medical records for each patient. An ambulatory surgical
37 facility may be operated as a part of a physician or dentist's office,
38 provided the facility is licensed under G.S. Chapter 131E, Article 6,
39 Part D, but the performance of incidental, limited ambulatory surgical
40 procedures which do not constitute an ambulatory surgical program as
41 defined in subdivision (1a) and which are performed in a physician's or
42 dentist's office does not make that office an ambulatory surgical
43 facility.

- 1 (1a) 'Air ambulance' means aircraft used to provide air transport of sick or
2 injured persons between destinations within the State.
- 3 (1a) (1b) 'Ambulatory surgical program' means a formal program for
4 providing on a same-day basis those surgical procedures which
5 require local, regional or general anesthesia and a period of post-
6 operative observation to patients whose admission for more than 24
7 hours is determined, prior to surgery, to be medically unnecessary.
- 8 (2) 'Bed capacity' means space used exclusively for inpatient care,
9 including space designed or remodeled for licensed inpatient beds even
10 though temporarily not used for such purposes. The number of beds to
11 be counted in any patient room shall be the maximum number for
12 which adequate square footage is provided as established by rules of
13 the Department except that single beds in single rooms are counted
14 even if the room contains inadequate square footage. The term 'bed
15 capacity' also refers to the number of dialysis stations in kidney
16 disease treatment centers, including freestanding dialysis units.
- 17 (2a) 'Bone marrow transplantation services' means the process of infusing
18 bone marrow into persons with diseases to stimulate the production of
19 blood cells.
- 20 (2b) 'Burn intensive care services' means services provided in a unit
21 designed to care for patients who have been severely burned.
- 22 (2c) 'Campus' means the adjacent grounds and buildings, or grounds and
23 buildings not separated by more than a public right-of-way, of a health
24 service facility and related health care entities.
- 25 (2a) (2d) 'Capital expenditure' means an expenditure for a project,
26 including but not limited to the cost of construction, engineering,
27 and equipment which under generally accepted accounting principles
28 is not properly chargeable as an expense of operation and
29 maintenance. Capital expenditure includes, in addition, the fair
30 market value of an acquisition made by donation, a lease or
31 comparable arrangement by which a person obtains equipment, the
32 expenditure for which would have been considered a capital
33 expenditure under this part if the person had acquired it by purchase.
- 34 (2e) 'Cardiac angioplasty equipment' means the cardiac catheterization
35 equipment used in surgery for the restoration, repair, or reconstruction
36 of coronary blood vessels.
- 37 (2f) 'Cardiac catheterization equipment' means the equipment required to
38 perform diagnostic procedures or therapeutic intervention in which a
39 catheter is introduced into a vein or artery and threaded through the
40 circulatory system to the heart.
- 41 (3) ~~'Certificate of need' means a written order of the Department setting~~
42 ~~forth the affirmative findings that a proposed project sufficiently~~
43 ~~satisfies the plans, standards, and criteria prescribed for such projects~~
44 ~~by this Article and by rules of the Department as provided in G.S.~~

- 1 ~~131E-183(a) and~~ which affords the person so designated as the legal
2 proponent of the proposed project the opportunity to proceed with the
3 development of such project.
- 4 (4) ~~'Certified cost estimate' means an estimate of the total cost of a project~~
5 ~~certified by a licensed architect or engineer which is based on:~~
- 6 a. ~~Preliminary plans and specifications;~~
7 b. ~~Estimates of the cost of equipment certified by the manufacturer~~
8 ~~or vendor; and~~
9 e. ~~Estimates of the cost of management and administration of the~~
10 ~~project.~~
- 11 (5) 'Change in bed capacity' means (i) any relocation of health service
12 facility beds, or dialysis stations from one licensed facility or campus
13 to another, or (ii) any redistribution of health service facility bed
14 capacity among the categories of health service facility bed as defined
15 in G.S. 131E-176(9c), or (iii) any increase in the number of health
16 service facility beds, or dialysis stations in kidney disease treatment
17 centers, including freestanding dialysis units.
- 18 (5a) 'Chemical dependency treatment facility' means a public or private
19 facility, or unit in a facility, which is engaged in providing 24-hour a
20 day treatment for chemical dependency or substance abuse. This
21 treatment may include detoxification, administration of a therapeutic
22 regimen for the treatment of chemically dependent or substance
23 abusing persons and related services. The facility or unit may be:
- 24 a. A unit within a general hospital or an attached or freestanding
25 unit of a general hospital licensed under Article 5, Chapter
26 131E, of the General Statutes,
27 b. A unit within a psychiatric hospital or an attached or
28 freestanding unit of a psychiatric hospital licensed under Article
29 1A of General Statutes Chapter 122 or Article 2 of General
30 Statutes Chapter 122C,
31 c. A freestanding facility specializing in treatment of persons who
32 are substance abusers or chemically dependent licensed under
33 Article 1A of General Statutes Chapter 122 or Article 2 of
34 General Statutes Chapter 122C; and may be identified as
35 'chemical dependency, substance abuse, alcoholism, or drug
36 abuse treatment units,' 'residential chemical dependency,
37 substance abuse, alcoholism or drug abuse facilities,' 'social
38 setting detoxification facilities' and 'medical detoxification
39 facilities,' or by other names if the purpose is to provide
40 treatment of chemically dependent or substance abusing
41 persons, but shall not include halfway houses or recovery farms.
- 42 (5b) 'Chemical dependency treatment beds' means beds that are licensed for
43 detoxification or for the inpatient treatment of chemical dependency.

- 1 Residential treatment beds for the treatment of chemical dependency
2 or substance abuse are chemical dependency treatment beds.
- 3 (6) 'Department' means the North Carolina Department of Human
4 Resources.
- 5 (7) To 'develop' when used in connection with health services, means to
6 undertake those activities which will result in the offering of
7 institutional health service not provided in the previous 12-month
8 reporting period or the incurring of a financial obligation in relation to
9 the offering of such a service.
- 10 (7a) 'Diagnostic center' means a freestanding facility, program, or provider,
11 including but not limited to, physicians offices, clinical laboratories,
12 radiology centers, and mobile diagnostic programs, in which the total
13 cost of all the medical diagnostic equipment utilized by the facility
14 exceeds two hundred fifty thousand dollars (\$250,000). In
15 determining whether the medical diagnostic equipment in a diagnostic
16 center costs more than two hundred fifty thousand dollars (\$250,000),
17 the costs of the equipment, studies, surveys, designs, plans, working
18 drawings, specifications, construction, installation, and other activities
19 essential to acquiring and making operational the equipment shall be
20 included. If the equipment is acquired for less than fair market value,
21 the cost of the equipment shall be deemed to be the fair market value.
- 22 (7b) 'Expedited review' means the status given to an application's review
23 process when the applicant petitions for such a review and the
24 Department approves the request based on findings that:
- 25 a. The review is not competitive;
26 b. The proposed capital expenditure is less than five million
27 dollars (\$5,000,000);
28 c. A request for a public hearing is not received within the time
29 frame defined in G.S. 131E-185; and
30 d. The agency has not determined that a public hearing is in the
31 public interest.
- 32 (7c) 'Gamma knife' means equipment which emits proton beams from a
33 stationary radioactive cobalt source to treat lesions deep within the
34 brain through stereotactic radiosurgery.
- 35 (8),(9) Repealed by Session Laws 1987, c. 511, s. 1.
- 36 (9a) 'Health service' means an organized, interrelated medical, diagnostic,
37 therapeutic, and/or rehabilitative activity that is integral to the
38 prevention of disease or the clinical management of a sick, injured, or
39 disabled person. 'Health service' does not include administrative and
40 other activities that are not integral to clinical management.
- 41 (9b) 'Health service facility' means a hospital; psychiatric facility;
42 rehabilitation facility; long term care facility; kidney disease treatment
43 center, including freestanding hemodialysis units; intermediate care
44 facility for the mentally retarded; home health agency office; chemical

- 1 dependency treatment facility; diagnostic center; oncology treatment
2 center; and ambulatory surgical facility.
- 3 (9c) 'Health service facility bed' means a bed licensed for use in a health
4 service facility in the categories of (i) acute care beds; (ii) psychiatric
5 beds; (iii) rehabilitation beds; (iv) nursing care beds; (v) intermediate
6 care beds for the mentally retarded; and (vi) chemical dependency
7 treatment beds.
- 8 (10) 'Health maintenance organization (HMO)' means a public or private
9 organization which has received its certificate of authority under
10 Article 67 of Chapter 58 of the General Statutes and which either is a
11 qualified health maintenance organization under Section 1310(d) of
12 the Public Health Service Act or:
- 13 a. Provides or otherwise makes available to enrolled participants
14 health care services, including at least the following basic
15 health care services: usual physician services, hospitalization,
16 laboratory, X ray, emergency and preventive services, and out-
17 of-area coverage;
- 18 b. Is compensated, except for copayments, for the provision of the
19 basic health care services listed above to enrolled participants
20 by a payment which is paid on a periodic basis without regard
21 to the date the health care services are provided and which is
22 fixed without regard to the frequency, extent, or kind of health
23 service actually provided; and
- 24 c. Provides physicians' services primarily (i) directly through
25 physicians who are either employees or partners of such
26 organizations, or (ii) through arrangements with individual
27 physicians or one or more groups of physicians organized on a
28 group practice or individual practice basis.
- 29 (10a) 'Heart lung bypass machine' means the equipment used to perform
30 extra-corporeal circulation and oxygenation during surgical
31 procedures.
- 32 (11) Repealed by Session Laws 1991, c. 692, s. 1.
- 33 (12) 'Home health agency' means a private organization or public agency,
34 whether owned or operated by one or more persons or legal entities,
35 which furnishes or offers to furnish home health services.
- 36 'Home health services' means items and services furnished to an
37 individual by a home health agency, or by others under arrangements
38 with such others made by the agency, on a visiting basis, and except
39 for paragraph e. of this subdivision, in a place of temporary or
40 permanent residence used as the individual's home as follows:
- 41 a. Part-time or intermittent nursing care provided by or under the
42 supervision of a registered nurse;
- 43 b. Physical, occupational or speech therapy;

- 1 c. Medical social services, home health aid services, and other
2 therapeutic services;
- 3 d. Medical supplies, other than drugs and biologicals and the use
4 of medical appliances;
- 5 e. Any of the foregoing items and services which are provided on
6 an outpatient basis under arrangements made by the home
7 health agency at a hospital or nursing home facility or
8 rehabilitation center and the furnishing of which involves the
9 use of equipment of such a nature that the items and services
10 cannot readily be made available to the individual in his home,
11 or which are furnished at such facility while he is there to
12 receive any such item or service, but not including
13 transportation of the individual in connection with any such
14 item or service.
- 15 (13) 'Hospital' means a public or private institution which is primarily
16 engaged in providing to inpatients, by or under supervision of
17 physicians, diagnostic services and therapeutic services for medical
18 diagnosis, treatment, and care of injured, disabled, or sick persons, or
19 rehabilitation services for the rehabilitation of injured, disabled, or sick
20 persons. The term includes all facilities licensed pursuant to G.S.
21 131E-77 of the General Statutes.
- 22 (13a) 'Hospice' means any coordinated program of home care with
23 provision for inpatient care for terminally ill patients and their
24 families. This care is provided by a medically directed
25 interdisciplinary team, directly or through an agreement under the
26 direction of an identifiable hospice administration. A hospice
27 program of care provides palliative and supportive medical and other
28 health services to meet the physical, psychological, social, spiritual
29 and special needs of patients and their families, which are
30 experienced during the final stages of terminal illness and during
31 dying and bereavement.
- 32 (14) Repealed by Session Laws 1987, c. 511, s. 1.
- 33 (14a) 'Intermediate care facility for the mentally retarded' means facilities
34 licensed pursuant to Article 2 of Chapter 122C of the General
35 Statutes for the purpose of providing health and habilitative services
36 based on the developmental model and principles of normalization
37 for persons with mental retardation, autism, cerebral palsy, epilepsy
38 or related conditions.
- 39 (14b) Repealed by Session Laws 1991, c. 692, s. 1.
- 40 (14c) 'Long term care facility' means a health service facility whose bed
41 complement of health service facility beds is composed principally
42 of nursing care facility beds.
- 43 (14d) 'Lithotripter' means extra-corporeal shock wave technology used to
44 treat persons with kidney stones and gallstones.

- 1 (14e) 'Magnetic resonance imaging scanner' means medical imaging
2 equipment that uses nuclear magnetic resonance.
- 3 (14f) 'Major medical equipment' means a single unit or single system of
4 components with related functions which is used to provide medical
5 and other health services and which costs more than seven hundred
6 fifty thousand dollars (\$750,000). In determining whether the
7 medical equipment costs more than seven hundred fifty thousand
8 dollars (\$750,000), the costs of the equipment, studies, surveys,
9 designs, plans, working drawings, specifications, construction,
10 installation, and other activities essential to acquiring and making
11 operational the equipment shall be included. If the equipment is
12 acquired for less than fair market value, the equipment cost shall be
13 deemed to be the fair market value. Major medical equipment does
14 not include replacement equipment as defined in this section.
- 15 (15) Repealed by Session Laws 1987, c. 511, s. 1.
- 16 (15a) 'Multispecialty ambulatory surgical program' means a formal
17 program for providing on a same-day basis surgical procedures for at
18 least three of the following specialty areas: gynecology,
19 otolaryngology, plastic surgery, general surgery, ophthalmology,
20 orthopedic, or oral surgery.
- 21 (15b) 'Neonatal intensive care services' means those services provided by a
22 health care facility to high risk newborn infants who require constant
23 nursing care, including but not limited to continuous
24 cardiopulmonary and other supportive care.
- 25 (16) 'New institutional health services' means:
26 a. The construction, development, or other establishment of a new
27 health service facility;
28 b. The obligation by any person of ~~any a~~ capital expenditure ~~on~~
29 ~~behalf of or for a health service facility as defined in subsection(9b)~~
30 ~~of this section~~ exceeding two million dollars (\$2,000,000) to
31 develop or expand a health service or a health service facility,
32 other than one to acquire an existing health service facility or to
33 replace such a facility destroyed or irreparably damaged by
34 accident or natural disaster. The cost of any studies, surveys,
35 designs, plans, working drawings, specifications, and other
36 activities, including staff effort and consulting and other
37 services, essential to the acquisition, improvement, expansion,
38 or replacement of any plant or equipment with respect to which
39 an expenditure is made shall be included in determining if the
40 expenditure exceeds two million dollars (\$2,000,000);
41 c. Any change in bed capacity as defined in G.S.131E-176(5);
42 d. The offering of dialysis services or home health services by or
43 on behalf of a health service facility if those services were not

- 1 offered within the previous 12 months by or on behalf of the
 2 facility;
- 3 e. A change in a project that was subject to certificate of need
 4 review and for which a certificate of need was issued, if the
 5 change is proposed during the development of the project or
 6 within one year after the project was completed. For purposes
 7 of this subdivision, a change in a project is a change of more
 8 than fifteen percent (15%) of the approved capital expenditure
 9 amount or the addition of a health service that is to be located in
 10 the facility, or portion thereof, that was constructed or
 11 developed in the project;
- 12 f. ~~The development or offering of a~~ any of the following health
 13 ~~service services~~ services by or on behalf of a ~~health service facility~~ any
 14 ~~person: if the service was not offered by or on behalf of the~~
 15 ~~health service facility in the previous 12 months and if the~~
 16 ~~annual operating costs of the service equal or exceed one~~
 17 ~~million dollars (\$1,000,000), or the expansion of an existing~~
 18 ~~health service when an annual operating cost of one million~~
 19 ~~dollars (\$1,000,000) is directly associated with the offering of~~
 20 ~~the expanded portion of the service;~~
- 21 1. Bone marrow transplantation services;
 - 22 2. Burn intensive care services;
 - 23 3. Neonatal intensive care services;
 - 24 4. Open heart surgery services; or
 - 25 5. Solid organ transplantation services.
- 26 f.1. The acquisition by purchase, donation, lease, transfer, or
 27 comparable arrangement, of any of the following equipment by
 28 or on behalf of any person:
- 29 I. Air ambulance;
 - 30 II. Cardiac angioplasty equipment;
 - 31 III. Cardiac catheterization equipment;
 - 32 IV. Gamma knife;
 - 33 V. Heart lung bypass machine;
 - 34 VI. Lithotripter;
 - 35 VII. Magnetic resonance imaging scanner; or
 - 36 VIII. Positron emission tomography scanner.
- 37 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- 38 l. The purchase, lease, or acquisition of any health service facility,
 39 or portion thereof, or a controlling interest in the health service
 40 facility or portion thereof, if the health service facility was
 41 developed under a certificate of need issued pursuant to G.S.
 42 131E-180;
- 43 m. Any conversion of nonhealth service facility beds to
 44 health service facility beds;

- 1 n. The construction, development, or other establishment of a
2 hospice if the operating budget thereof is in excess of one
3 hundred thousand dollars (\$100,000).
- 4 o. The opening of an additional office by an existing home health
5 agency within its service area as defined by rules adopted by the
6 Department; or the opening of any office by an existing home
7 health agency outside its service area as defined by rules
8 adopted by the Department.
- 9 p. The acquisition by purchase, donation, lease, transfer, or
10 comparable arrangement, by any person of major medical
11 equipment.
- 12 q. The relocation of a health service facility from one service area
13 to another.
- 14 r. The conversion of a specialty ambulatory surgical program to a
15 multispecialty ambulatory surgical program or the addition of a
16 specialty to a specialty ambulatory surgical program.
- 17 (17) 'North Carolina State Health Coordinating Council' means the
18 Council that prepares, with the Department of Human Resources, the
19 State Medical Facilities Plan, ~~a component of the State Health Plan~~ Plan.
- 20 (17a) 'Nursing care' means:
- 21 a. Skilled nursing care and related services for residents who
22 require medical or nursing care;
- 23 b. Rehabilitation services for the rehabilitation of injured,
24 disabled, or sick persons; or
- 25 c. Health-related care and services provided on a regular basis to
26 individuals who because of their mental or physical condition
27 require care and services above the level of room and board,
28 which can be made available to them only through institutional
29 facilities.
- 30 These are services which are not primarily for the care and treatment
31 of mental diseases.
- 32 (18) To 'offer,' when used in connection with health services, means that
33 the health service facility or health maintenance organization holds
34 itself out as capable of providing, or as having the means for the
35 provision of, specified health services.
- 36 (18a) 'Oncology treatment center' means a facility, program, or provider,
37 other than an existing health service facility that provides services for
38 diagnosis, evaluation, and treatment of cancer and its sequela, and for
39 which the total cost of all the medical equipment utilized by the center,
40 exceeds two hundred fifty thousand dollars (\$250,000). In
41 determining whether costs are more than two hundred fifty thousand
42 dollars (\$250,000), the costs of equipment, studies, surveys, designs,
43 plans, working drawings, specifications, construction, installation, and
44 other activities essential to acquiring and making operational the

- 1 facility shall be included. If the equipment is acquired for less than
2 fair market value, the cost of the equipment shall be deemed to be the
3 fair market value.
- 4 (18b) 'Open heart surgery service' means the provision of surgical
5 procedures that utilize a heart lung bypass machine during surgery, to
6 correct cardiac and coronary artery disease or defects.
- 7 (19) 'Person' means an individual, a trust or estate, a partnership, a
8 corporation, including associations, joint stock companies, and
9 insurance companies; the State, or a political subdivision or agency or
10 instrumentality of the State.
- 11 (19a) 'Positron emission tomography scanner' means equipment that utilizes
12 a computerized radiographic technique that employs radioactive
13 substances to examine the metabolic activity of various body
14 structures.
- 15 (20) 'Project' or 'capital expenditure project' means a proposal to undertake
16 a capital expenditure that results in the offering of a new institutional
17 health service as defined by this Article. A project, or capital
18 expenditure project, or proposed project may refer to the project from
19 its earliest planning stages up through the point at which the specified
20 new institutional health service may be offered. In the case of facility
21 construction, the point at which the new institutional health service
22 may be offered must take place after the facility is capable of being
23 fully licensed and operated for its intended use, and at that time it shall
24 be considered a health service facility.
- 25 (21) 'Psychiatric facility' means a public or private facility licensed
26 pursuant to Article 2 of Chapter 122C of the General Statutes and
27 which is primarily engaged in providing to inpatients, by or under the
28 supervision of a physician, psychiatric services for the diagnosis and
29 treatment of mentally ill persons.
- 30 (22) 'Rehabilitation facility' means a public or private inpatient facility
31 which is operated for the primary purpose of assisting in the
32 rehabilitation of disabled persons through an integrated program of
33 medical and other services which are provided under competent,
34 professional supervision.
- 35 (22a) 'Replacement equipment' means equipment that costs less than two
36 million dollars (\$2,000,000), purchased for the sole purpose of
37 replacing comparable major medical equipment currently in use which
38 will be sold or otherwise disposed of when replaced. In determining
39 whether equipment costs less than two million dollars (\$2,000,000),
40 the costs of equipment, studies, surveys, designs, plans, working
41 drawings, specifications, construction, installation, and other activities
42 essential to acquiring and making operational the equipment shall be
43 included. If the equipment is acquired for less than fair market value,
44 the cost of the equipment shall be deemed to be the fair market value.

- 1 (23) Repealed by Session Laws 1991, c. 692, s. 1.
2 (24) ~~'State Health Plan' means the plan prepared by the Department of~~
3 ~~Human Resources and the North Carolina State Health Coordinating~~
4 ~~Council and approved by the Governor.~~
5 (24a) 'Service area' means the area of the State, as defined in the State
6 Medical Facilities Plan or in rules promulgated by the Department,
7 which receives services from a health care facility.
8 (24b) 'Solid organ transplantation service' means the provision of surgical
9 procedures, and, the interrelated medical services that accompany the
10 surgery, to remove an organ from a patient and surgically implant an
11 organ from a donor.
12 (24c) 'Specialty ambulatory surgical program' means a formal program for
13 providing on a same-day basis surgical procedures for only the
14 specialty areas identified on the ambulatory surgical facility's 1993
15 Application for Licensure as an Ambulatory Surgical Center and
16 authorized by its certificate of need.
17 (25) ~~'State Medical Facilities Plan' means a component of the State Health~~
18 ~~Plan—the plan prepared by the Department of Human Resources and the~~
19 ~~North Carolina State Health Coordinating Council, and approved by~~
20 ~~the Governor.~~
21 (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.
22 (27) Repealed by Session Laws 1987, c. 511, s. 1."
23 Sec. 3. G.S. 131E-177 reads as rewritten:

24 **"§ 131E-177. Department of Human Resources is designated State Health**
25 **Planning and Development Agency; powers and duties.**

26 The Department of Human Resources is designated as the State Health Planning and
27 Development Agency for the State of North Carolina, and is empowered to exercise the
28 following powers and duties:

- 29 (1) To establish standards and criteria or plans required to carry out the
30 provisions and purposes of this Article and to adopt rules pursuant to
31 Chapter 150B of the General Statutes, to carry out the purposes and
32 provisions of this Article;
33 (2) Adopt, amend, and repeal such rules and regulations, consistent with
34 the laws of this State, as may be required by the federal government
35 for grants-in-aid for health service facilities and health planning which
36 may be made available by the federal government. This section shall
37 be liberally construed in order that the State and its citizens may
38 benefit from such grants-in-aid;
39 (3) Define, by rule, procedures for submission of periodic reports by
40 persons or health service facilities subject to agency review under this
41 Article;
42 (4) Develop policy, criteria, and standards for health service facilities
43 planning, conduct statewide inventories of and make determinations of

1 need for health service facilities, and develop a State ~~Health~~ Medical
2 Facilities Plan;

3 (5) Implement, by rule, criteria for project review;

4 (6) Have the power to grant, deny, or withdraw a certificate of need and to
5 impose such sanctions as are provided for by this Article;

6 (7) Solicit, accept, hold and administer on behalf of the State any grants or
7 bequests of money, securities or property to the Department for use by
8 the Department in the administration of this Article; and

9 (8) Repealed by Session Laws 1987, c. 511, s. 1.

10 (9) Establish and collect fees for submitting applications for ~~certificates of~~
11 ~~need, which fees shall be based on the total cost of the project for which the~~
12 ~~applicant is applying~~ certificates of need. This fee may not exceed
13 fifteen thousand dollars ~~(\$15,000) and may not be less than four hundred~~
14 ~~dollars (\$400.00).~~ (\$15,000).

15 (10) The authority to review all records in any recording medium of any
16 person or health service facility subject to agency review under this
17 Article which pertain to construction and acquisition activities, staffing
18 or costs and charges for patient care, including but not limited to,
19 construction contracts, architectural contracts, consultant contracts,
20 purchase orders, cancelled checks, accounting and financial records,
21 debt instruments, loan and security agreements, staffing records,
22 utilization statistics and any other records the Department deems to be
23 reasonably necessary to determine compliance with this Article.

24 The Secretary of Human Resources shall have final decision-making authority with
25 regard to all functions described in this section."

26 Sec. 4. G.S. 131E-178 reads as rewritten:

27 **"§ 131E-178. Activities requiring certificate of need.**

28 (a) No person shall offer or develop a new institutional health service without
29 first obtaining a certificate of need from the Department; provided, however, no hospital
30 licensed pursuant to Article 5 of this Chapter that was established to serve a minority
31 population that would not otherwise have been served and that continues to serve a
32 minority population may be required to obtain a certificate of need for transferring up to
33 65 beds to nursing care facility beds.

34 (b) No person shall make an acquisition by donation, lease, transfer, or
35 comparable arrangement without first obtaining a certificate of need from the
36 Department, if the acquisition would have been a new institutional health service if it
37 had been made by purchase. In determining whether an acquisition would have been a
38 new institutional health service the fair market value of the asset shall be deemed to be
39 the purchase price.

40 (c) No person shall incur an obligation for a capital expenditure which is a new
41 institutional health service without first obtaining a certificate of need from the
42 Department. An obligation for a capital expenditure is incurred when:

43 (1) An enforceable contract, excepting contracts which are expressly
44 contingent upon issuance of a certificate of need, is entered into by a

1 person for the construction, acquisition, lease or financing of a capital
2 asset;

3 (2) A person takes formal action to commit funds for a construction
4 project undertaken as his own contractor; or

5 (3) In the case of donated property, the date on which the gift is
6 completed.

7 (d) Where the estimated cost of a proposed capital ~~expenditure~~ expenditure,
8 including the fair market value of equipment acquired by purchase, lease, transfer, or
9 other comparable arrangement, is certified by a licensed architect or engineer to be
10 equal to or less than the expenditure minimum for capital expenditure for a new
11 institutional health service as provided in G.S. 131E-176(16)(b), such expenditure shall
12 be deemed not to exceed the ~~expenditure minimum for capital expenditures~~ amount for a
13 new institutional health service regardless of the actual amount expended, provided that
14 the following conditions are met:

15 (1) The certified estimated cost is prepared in writing 60 days or more
16 before the obligation for the capital expenditure is incurred. Certified
17 cost estimates shall be available for inspection at the facility and sent
18 to the Department upon its request.

19 (2) The facility on whose behalf the expenditure was made notifies the
20 Department in writing within 30 days of the date on which such
21 expenditure is made if the expenditure exceeds the expenditure
22 minimum for capital expenditures. The notice shall include a copy of
23 the certified cost estimate.

24 (e) The Department may grant certificates of need which permit capital
25 expenditures only for predevelopment activities. Predevelopment activities include the
26 preparation of architectural designs, plans, working drawings, or specifications, the
27 preparation of studies and surveys, and the acquisition of a potential site."

28 Sec. 5. G.S. 131E-181 reads as rewritten:

29 "**§ 131E-181. Nature of certificate of need.**

30 (a) A certificate of need shall be valid only for the defined scope, physical
31 location, and person named in the application. A certificate of need shall not be
32 transferred or assigned except as provided in G.S. 131E-189(c).

33 (b) A recipient of a certificate of need, or any person who may subsequently
34 acquire, in any manner whatsoever permitted by law, the service for which that
35 certificate of need was issued, is required to materially comply with the representations
36 made in its application for that certificate of need. The Department shall require any
37 recipient of a certificate of need, or its successor, whose service is in operation to
38 submit to the Department evidence that the recipient, or its successor, is in material
39 compliance with the representations made in its application for the certificate of need
40 which granted the recipient the right to operate that service. In determining whether the
41 recipient of a certificate of need, or its successor, is operating a service which materially
42 differs from the representations made in its application for that certificate of need, the
43 Department shall consider cost increases to the recipient, or its successor, including, but
44 not limited to, the following:

- 1 (1) Any increase in the consumer price index;
 2 (2) Any increased cost incurred because of Government requirements,
 3 including federal, State, or any political subdivision thereof; and
 4 (3) Any increase in cost due to professional fees or the purchase of
 5 services and supplies.

6 (c) Whenever a certificate of need is issued more than 12 months after the
 7 application for the certificate of need began review, the Department shall adjust the
 8 capital expenditure amount proposed by increasing it to reflect any inflation in the
 9 Department of Commerce's Construction Cost Index that has occurred since the date
 10 when the application began review; and the Department shall use this recalculated
 11 capital expenditure amount in the certificate of need issued for the project.

12 (d) A project authorized by a certificate of need is complete when the health
 13 service or the health service facility for which the certificate of need was issued is
 14 licensed and certified and is in material compliance with the representations made in the
 15 certificate of need application."

16 Sec. 6. G.S. 131E-183 reads as rewritten:

17 **"§ 131E-183. Review criteria.**

18 (a) The Department shall review all applications utilizing the criteria outlined in
 19 this subsection and shall determine that an application is either consistent with or not in
 20 conflict with these criteria before a certificate of need for the proposed project shall be
 21 issued.

22 (1) The proposed project shall be consistent with applicable policies and
 23 ~~projections-need determinations~~ in the State Medical Facilities Plan, the
 24 ~~needs-projection-need determination~~ of which constitutes a
 25 determinative limitation on the ~~number of health services, health~~
 26 ~~service facilities, health service facility beds, dialysis stations,~~
 27 ~~ambulatory surgical facilities operating rooms, or home health agencies~~
 28 ~~offices that may be allocated.~~ may be approved.

29 (2) Repealed by Session Laws 1987, c. 511, s. 1.

30 (3) The applicant shall identify the population to be served by the
 31 proposed project, and shall demonstrate the need that this population
 32 has for the services proposed, and the extent to which all residents of
 33 the area, and, in particular, low income persons, racial and ethnic
 34 minorities, women, handicapped persons, the elderly, and other
 35 underserved groups are likely to have access to the services proposed.

36 (3a) In the case of a reduction or elimination of a service, including the
 37 relocation of a facility or a service, the applicant shall demonstrate that
 38 the needs of the population presently served will be met adequately by
 39 the proposed relocation or by alternative arrangements, and the effect
 40 of the reduction, elimination or relocation of the service on the ability
 41 of low income persons, racial and ethnic minorities, women,
 42 handicapped persons, and other underserved groups and the elderly to
 43 obtain needed health care.

- 1 (4) Where alternative methods of meeting the needs for the proposed
2 project exist, the applicant shall demonstrate that the least costly or
3 most effective alternative has been proposed.
- 4 (5) Financial and operational projections for the project shall demonstrate
5 the availability of funds for capital and operating needs as well as the
6 immediate and long-term financial feasibility of the proposal, based
7 upon reasonable projections of the costs of and charges for providing
8 health services by the person proposing the service.
- 9 (6) The applicant shall demonstrate that the proposed project will not
10 result in unnecessary duplication of existing or approved health service
11 capabilities or facilities.
- 12 (7) The applicant shall show evidence of the availability of resources,
13 including health manpower and management personnel, for the
14 provision of the services proposed to be provided. ~~Further, the applicant
15 shall show that the use of these resources for provision of these services will
16 not preclude alternative uses of these resources to fulfill other more
17 important needs identified by the applicable State Health Plan.~~
- 18 (8) The applicant shall demonstrate that the provider of the proposed
19 services will make available, or otherwise make arrangements for, the
20 provision of the necessary ancillary and support services. The
21 applicant shall also demonstrate that the proposed service will be
22 coordinated with the existing health care system.
- 23 (9) An applicant proposing to provide a substantial portion of the project's
24 services to individuals not residing in the health service area in which
25 the project is located, or in adjacent health service areas, shall
26 document the special needs and circumstances that warrant service to
27 these individuals.
- 28 (10) When applicable, the applicant shall show that the special needs of
29 health maintenance organizations will be fulfilled by the project.
30 Specifically, the applicant shall show that the project accommodates:
- 31 a. The needs of enrolled members and reasonably anticipated new
32 members of the HMO for the health service to be provided by
33 the organization; and
- 34 b. The availability of new health services from non-HMO
35 providers or other HMOs in a reasonable and cost-effective
36 manner which is consistent with the basic method of operation
37 of the HMO. In assessing the availability of these health
38 services from these providers, the applicant shall consider only
39 whether the services from these providers:
- 40 1. Would be available under a contract of at least five years'
41 duration;
- 42 2. Would be available and conveniently accessible through
43 physicians and other health professionals associated with
44 the HMO;

- 1 3. Would cost no more than if the services were provided
2 by the HMO; and
- 3 4. Would be available in a manner which is
4 administratively feasible to the HMO.
- 5 (11) Repealed by Session Laws 1987, c. 511, s. 1.
- 6 (12) Applications involving construction shall demonstrate that the cost,
7 design, and means of construction proposed represent the most
8 reasonable alternative, and that the construction project will not unduly
9 increase the costs of providing health services by the person proposing
10 the construction project or the costs and charges to the public of
11 providing health services by other persons, and that applicable energy
12 saving features have been incorporated into the construction plans.
- 13 (13) The applicant shall demonstrate the contribution of the proposed
14 service in meeting the health-related needs of the elderly and of
15 members of medically underserved groups, such as medically indigent
16 or low income persons, Medicaid and Medicare recipients, racial and
17 ethnic minorities, women, and handicapped persons, which have
18 traditionally experienced difficulties in obtaining equal access to the
19 proposed services, particularly those needs identified in the State
20 Health Plan as deserving of priority. For the purpose of determining
21 the extent to which the proposed service will be accessible, the
22 applicant shall show:
- 23 a. The extent to which medically underserved populations
24 currently use the applicant's existing services in comparison to
25 the percentage of the population in the applicant's service area
26 which is medically underserved;
- 27 b. Its past performance in meeting its obligation, if any, under any
28 applicable regulations requiring provision of uncompensated
29 care, community service, or access by minorities and
30 handicapped persons to programs receiving federal assistance,
31 including the existence of any civil rights access complaints
32 against the applicant;
- 33 c. That the elderly and the medically underserved groups
34 identified in this subdivision will be served by the applicant's
35 proposed services and the extent to which each of these groups
36 is expected to utilize the proposed services; and
- 37 d. That the applicant offers a range of means by which a person
38 will have access to its services. Examples of a range of means
39 are outpatient services, admission by house staff, and admission
40 by personal physicians.
- 41 (14) The applicant shall demonstrate that the proposed health services
42 accommodate the clinical needs of health professional training
43 programs in the area, as applicable.
- 44 (15) to (18) Repealed by Session Laws 1987, c. 511, s. 1.

1 (18a) The applicant shall demonstrate the expected effects of the proposed
2 services on competition in the proposed service area, including how
3 any enhanced competition will have a positive impact upon the cost
4 effectiveness, quality, and access to the services proposed; and in the
5 case of applications for services where competition between providers
6 will not have a favorable impact on cost effectiveness, quality, and
7 access to the services proposed, the applicant shall demonstrate that its
8 application is for a service on which competition will not have a
9 favorable impact.

10 (19) Repealed by Session Laws 1987, c. 511, s. 1.

11 (20) An applicant already involved in the provision of health
12 services shall provide evidence that quality care has been provided
13 in the past.

14 (21) Repealed by Session Laws 1987, c. 511, s. 1.

15 (b) The Department is authorized to adopt rules for the review of particular types
16 of applications that will be used in addition to those criteria outlined in subsection (a) of
17 this section and may vary according to the purpose for which a particular review is
18 being conducted or the type of health service reviewed. No such rule adopted by the
19 Department shall require an academic medical center teaching hospital, as defined by
20 the State Medical Facilities Plan, to demonstrate that any facility or service at another
21 hospital is being appropriately utilized in order for that academic medical center
22 teaching hospital to be approved for the issuance of a certificate of need to develop any
23 similar facility or service.

24 (c) Repealed by Session Laws 1987, c. 511, s. 1."

25 Sec. 7. G.S. 131E-184 reads as rewritten:

26 "**§ 131E-184. Exemptions from review.**

27 (a) Except as provided in subsection (b), the Department shall exempt from
28 certificate of need review a proposed capital expenditure if it receives notice from the
29 entity proposing to make the capital expenditure, which notice includes an explanation
30 of why the expenditure is required:

31 (1) To eliminate or prevent imminent safety hazards as defined in federal,
32 State, or local fire, building, or life safety codes or regulations;

33 (1a) To comply with State licensure standards;

34 (1b) To comply with accreditation or certification standards which must be
35 met to receive reimbursement under Title XVIII of the Social Security
36 Act or payments under a State plan for medical assistance approved
37 under Title XIX of that act;

38 (2) Repealed by Session Laws 1987, c. 511, s. 1.

39 (3) To provide data processing equipment;

40 (4) To provide parking, heating or cooling systems, elevators, or other
41 basic plant or mechanical improvements, unless these activities are
42 integral portions of a project that involves the construction of a new
43 health service facility or portion thereof and that is subject to
44 certificate of need review; ø

- 1 (5) To replace or repair facilities destroyed or damaged by accident or
2 natural ~~disaster~~ disaster;
- 3 (6) To provide any nonhealth service facility or service;
- 4 (7) To provide replacement equipment;
- 5 (8) To provide for the relocation of health service facility beds under the
6 same ownership on the same campus; or
- 7 (9) To provide for a physician office building, provided the building does
8 not include a new institutional health service.

9 (b) Those portions of a proposed project which are not proposed for one or more
10 of the purposes under subsection (a) of this section are subject to certificate of need
11 review, if these non-exempt portions of the project are new institutional health services
12 under G.S. 131E-176(16).

13 (c) The Department shall exempt from certificate of need review any conversion
14 of existing acute care beds to psychiatric beds provided:

- 15 (1) The hospital proposing the conversion has executed a contract with the
16 Department's Division of Mental Health, Developmental Disabilities,
17 and Substance Abuse Services and/or one or more of the Area Mental
18 Health, Developmental Disabilities, and Substance Abuse Authorities
19 to provide psychiatric beds to patients referred by the contracting
20 agency or agencies; and
- 21 (2) The total number of beds to be converted shall not be more than twice
22 the number of beds for which the contract pursuant to subdivision (1)
23 of this subsection shall provide."

24 Sec. 8. G.S. 131E-185 reads as rewritten:

25 "**§ 131E-185. Review process.**

26 (a) Repealed by Session Laws 1987, c. 511, s. 1.

27 (a1) Except as provided in subsection (c) of this section, there shall be a time limit
28 of 90 days for review of the applications, beginning on the day established by rule as the
29 day on which applications for the particular service in the service area shall begin
30 review.

- 31 (1) Any person may file written comments and exhibits concerning a
32 proposal under review with the Department, not later than 30 days
33 after the date on which the application begins review. These written
34 comments may include:
- 35 a. Facts relating to the service area proposed in the application;
- 36 b. Facts relating to the representations made by the applicant in its
37 application, and its ability to perform or fulfill the
38 representations made;
- 39 c. Discussion and argument regarding whether, in light of the
40 material contained in the application and other relevant factual
41 material, the application complies with relevant review criteria,
42 plans, and standards.
- 43 (2) No more than 20 days from the conclusion of the written comment
44 period, the Department shall ensure that a public hearing is conducted

1 at a place within the appropriate health service area if one or more of
2 the following circumstances apply; the review to be conducted is
3 competitive; the proponent proposes to spend five million dollars
4 (\$5,000,000) or more; a written request for a public hearing is received
5 before the end of the written comment period from an affected party as
6 defined in G.S. 131E-188(c); or the agency determines that a hearing is
7 in the public interest. At such public hearing oral arguments may be
8 made regarding the application or applications under review; and this
9 public hearing shall include the following:

- 10 a. An opportunity for the proponent of each application under
11 review to respond to the written comments submitted to the
12 Department about its application;
- 13 b. An opportunity for any affected person as defined in G.S. 131E-
14 188(c), except one of the proponents, to present comments
15 regarding the applications under review;
- 16 c. An opportunity for a representative of the Department, or such
17 other person or persons who are designated by the Department
18 to conduct the hearing, to question each proponent of
19 applications under review with regard to the contents of the
20 application;

21 The Department shall maintain a recording of any required public
22 hearing on an application until such time as the Department's final
23 decision is issued, or until a final agency decision is issued pursuant to
24 a contested case hearing, whichever is later; and any person may
25 submit a written synopsis or verbatim statement that contains the oral
26 presentation made at the hearing.

- 27 (3) The Department may contract or make arrangements with a person or
28 persons located within each health service area for the conduct of such
29 public hearings as may be necessary. The Department shall publish, in
30 each health service area, notice of the contracts that it executes for the
31 conduct of those hearings.
- 32 (4) Within 15 days from the beginning of the review of an application or
33 applications proposing the same service within the same service area,
34 the Department shall publish notice of the deadline for receipt of
35 written comments, of the time and place scheduled for the public
36 hearing regarding the application or applications under review, and of
37 the name and address of the person or agency that will preside.
- 38 (5) The Department shall maintain all written comments submitted to it
39 during the written comment stage and any written submissions
40 received at the public hearing as part of the Department's file
41 respecting each application or group of applications under review by it.
42 The application, written comments, and public hearing comments,
43 together with all documents that the Department used in arriving at its
44 decision, from whatever source, and any documents that reflect or set

1 out the Department's final analysis of the application or applications
2 under review, shall constitute the Department's record for the
3 application or applications under review.

4 (a2) When an expedited review has been approved by the Department, no public
5 hearing will be held; the Department may contact the applicant and request additional or
6 clarifying information, amendments to or substitutions for portions of the application;
7 and the Department may negotiate conditions to be imposed on the certificate of need
8 with the applicant.

9 (b) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 137(a),
10 effective July 8, 1992.

11 (c) The Department may extend the review period for a period not to exceed 60
12 days and provide notice of such extension to all applicants. For expedited reviews, the
13 Department may extend the review period only if it has requested additional substantive
14 information from the applicant."

15 Sec. 9. G.S. 131E-188 reads as rewritten:

16 "**§ 131E-188. Administrative and judicial review.**

17 (a) After a decision of the Department to issue, deny or withdraw a certificate of
18 need or exemption or to issue a certificate of need pursuant to a settlement agreement
19 with an applicant to the extent permitted by law, any affected person, as defined in
20 subsection (c) of this section, shall be entitled to a contested case hearing under Article
21 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed
22 within 30 days after the Department makes its decision. When a petition is filed, the
23 Department shall send notification of the petition to the proponent of each application
24 that was reviewed with the application for a certificate of need that is the subject of the
25 petition. Any affected person shall be entitled to intervene in a contested case.

26 A contested case shall be conducted in accordance with the following timetable:

- 27 (1) An administrative law judge or a hearing officer, as appropriate, shall
28 be assigned within 15 days after a petition is filed.
- 29 (2) The parties shall complete discovery within 90 days after the
30 assignment of the administrative law judge or hearing officer.
- 31 (3) The hearing at which sworn testimony is taken and evidence is
32 presented shall be held within 45 days after the end of the discovery
33 period.
- 34 (4) The administrative law judge or hearing officer shall make his
35 recommended decision within 75 days after the hearing.
- 36 (5) The Department shall make its final decision within 30 days of
37 receiving the official record of the case from the Office of
38 Administrative Hearings.

39 The administrative law judge or hearing officer assigned to a case may extend the
40 deadlines in subdivisions (2) through (4) so long as the administrative law judge or
41 hearing officer makes his recommended decision in the case within 270 days after the
42 petition is filed. The Department may extend the deadline in subdivision (5) for up to
43 30 days by giving all parties written notice of the extension.

1 (a1) On or before the date of filing a petition for a contested case hearing on the
2 approval of an applicant for a certificate of need, the petitioner shall deposit a bond with
3 the clerk of superior court where the new institutional health service that is the subject
4 of the petition is proposed to be located. The bond shall be secured by cash or its
5 equivalent in an amount equal to five percent (5%) of the cost of the proposed new
6 institutional health service that is the subject of the petition, but may not be less than
7 five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A
8 petitioner who received approval for a certificate of need and is contesting only a
9 condition in the certificate is not required to file a bond under this subsection.

10 The applicant who received approval for the new institutional health service that is
11 the subject of the petition may bring an action against a bond filed under this subsection
12 in the superior court of the county where the bond was filed. Upon finding that the
13 petition for a contested case was frivolous or filed to delay the applicant, the court may
14 award the applicant part or all of the bond filed under this subsection. At the conclusion
15 of the contested case, if the court does not find that the petition for a contested case was
16 frivolous or filed to delay the applicant, the petitioner shall be entitled to the return of
17 the bond deposited with the superior court upon demonstrating to the clerk of superior
18 court where the bond was filed that the contested case hearing is concluded.

19 (b) Any affected person who was a party in a contested case hearing shall be
20 entitled to judicial review of all or any portion of any final decision of the Department
21 in the following manner. The appeal shall be to the Court of Appeals as provided in
22 G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of
23 appellate procedure. The appeal of the final decision of the Department shall be taken
24 within 30 days of the receipt of the written notice of final decision ~~decision~~, ~~required by~~
25 ~~G.S. 131E-187~~ and notice of appeal shall be filed with the Division of Facility Services,
26 Department of Human Resources and ~~with~~ served on all other affected persons who
27 were parties to the contested hearing.

28 (b1) Before filing an appeal of a final decision by the Department granting a
29 certificate of need, the affected person shall deposit a bond with the Clerk of the Court
30 of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to
31 five percent (5%) of the cost of the proposed new institutional health service that is the
32 subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may
33 not exceed fifty thousand dollars (\$50,000). A holder of a certificate of need who is
34 appealing only a condition in the certificate is not required to file a bond under this
35 subsection.

36 If the Court of Appeals finds that the appeal was frivolous or filed to delay the
37 applicant, the court shall remand the case to the superior court of the county where a
38 bond was filed for the contested case hearing on the certificate of need. The superior
39 court may award the holder of the certificate of need part or all of the bond. The court
40 shall award the holder of the certificate of need reasonable attorney fees and costs
41 incurred in the appeal to the Court of Appeals. If the Court of Appeals does not find
42 that the appeal was frivolous or filed to delay the applicant, and does not remand the
43 case to superior court for a possible award of all or part of the bond to the holder of the

1 certificate of need, the person originally filing the bond shall be entitled to a return of
2 the bond.

3 (c) The term 'affected persons' includes: the applicant; ~~the health systems agency~~
4 ~~for the health service area in which the proposed project is to be located; health systems~~
5 ~~agencies serving contiguous health service areas or located within the same standard~~
6 ~~metropolitan statistical area;~~ any person residing within the geographic area served or to
7 be served by the applicant; any person who regularly uses health service facilities within
8 that geographic area; health service facilities and health maintenance organizations
9 (HMOs) located in the health service area in which the project is proposed to be located,
10 which provide services similar to the services of the facility under review; health service
11 facilities and HMOs which, prior to receipt by the agency of the proposal being
12 reviewed, have formally indicated an intention to provide similar services in the future;
13 third party payers who reimburse health service facilities for services in the health
14 service area in which the project is proposed to be located; and any agency which
15 establishes rates for health service facilities or HMOs located in the health service area
16 in which the project is proposed to be located."

17 Sec. 10. G.S. 131E-189 reads as rewritten:

18 **"§ 131E-189. Withdrawal of a certificate of need.**

19 (a) The Department shall specify in each certificate of need the time the holder
20 has to make the service or equipment available or to complete the project and the
21 timetable to be followed. The timetable shall be the one proposed by the holder of the
22 certificate of need unless the Department specifies a different timetable in its decision
23 letter. The holder of the certificate shall submit such periodic reports on his progress in
24 meeting the timetable as may be required by the Department. If no progress report is
25 provided or, after reviewing the progress, the Department determines that the holder of
26 the certificate is not meeting the timetable and the holder cannot demonstrate that it is
27 making good faith efforts to meet the timetable, the Department may withdraw the
28 certificate. If the Department determines that the holder of the certificate is making a
29 good faith effort to meet the timetable, the Department may, at the request of the holder,
30 extend the timetable for a specified period.

31 (b) The Department may withdraw any certificate of need, if the holder of the
32 certificate fails to develop ~~and operate the service~~ in a manner consistent with the
33 representations made in the application or with any condition or conditions the
34 Department placed on the certificate of need.

35 (c) The Department may immediately withdraw any certificate of need if the
36 holder of the certificate, before completion of the project or operation of the facility,
37 transfers ownership or control of the ~~facility~~ facility, the project, or the certificate of
38 need. Any transfer after that time will be subject to the requirement that the service be
39 provided consistent with the representations made in the application and any applicable
40 conditions the Department placed on the certificate of need. Transfers resulting from
41 death or personal illness or other good cause, as determined by the Department, shall not
42 result in withdrawal if the Department receives prior written notice of the transfer and
43 finds good cause. Transfers resulting from death shall not result in withdrawal. approves it."

44 Sec. 11. G.S. 131E-190 reads as rewritten:

1 **"§ 131E-190. Enforcement and sanctions.**

2 (a) Only those new institutional health services which are found by the
3 Department to be needed as provided in this Article and granted certificates of need
4 shall be offered or developed within the State.

5 (b) No formal commitments made for financing, construction, or acquisition
6 regarding the offering or development of a new institutional health service shall be
7 made by any person unless a certificate of need for such service or activities has been
8 granted.

9 ~~(c) Nothing in this Article shall be construed as terminating the P.L. 92-603,~~
10 ~~Section 1122, capital expenditure program or the contract between the State of North~~
11 ~~Carolina and the United States under that program. The sanctions available under that~~
12 ~~program and contract, with regard to the determination of whether the amounts~~
13 ~~attributable to an applicable project or capital expenditure project should be included or~~
14 ~~excluded in determining payments to the proponent under Titles V, XVIII, and XIX of~~
15 ~~the Social Security Act, shall remain available to the State.~~

16 (d) If any person proceeds to offer or develop a new institutional health
17 service without having first obtained a certificate of need for such services, the penalty
18 for such violation of this Article and rules hereunder may include the withholding of
19 federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for
20 reimbursement of capital and operating expenses related to the provision of the new
21 institutional health service.

22 (e) The Department may revoke or suspend the license of any person who
23 proceeds to offer or develop a new institutional health service without having first
24 obtained a certificate of need for such services.

25 (f) The Department may assess a civil penalty of not more than twenty thousand
26 dollars (\$20,000) against any person who knowingly offers or develops any new
27 institutional health service within the meaning of this Article without a certificate of
28 need issued under this Article and the rules pertaining thereto, or in violation of the
29 terms or conditions of such a certificate, whenever it determines a violation has
30 occurred and each time the service is provided in violation of this provision. In
31 determining the amount of the penalty the Department shall consider the degree and
32 extent of harm caused by the violation and the cost of rectifying the damage. A person
33 who is assessed a penalty shall be notified of the penalty by registered or certified mail.
34 The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the
35 Department shall refer the matter to the Attorney General for collection. For the
36 purpose of this subsection, the word 'person' shall not include an individual in his
37 capacity as an officer, director, or employee of a person as otherwise defined in this
38 Article.

39 (g) No agency of the State or any of its political subdivisions may appropriate or
40 grant funds or financially assist in any way a person, applicant, or facility which is or
41 whose project is in violation of this Article.

42 (h) If any person proceeds to offer or develop a new institutional health service
43 without having first obtained a certificate of need for such services, the Secretary of
44 Human Resources or any person aggrieved, as defined by G.S. 150B-2(6), may bring a

1 civil action for injunctive relief, temporary or permanent, against the person offering,
2 developing or operating any new institutional health service. The action may be
3 brought in the superior court of any county in which the health service facility is located
4 or in the superior court of Wake County.

5 (i) If the Department determines that the recipient of a certificate of need, or its
6 successor, is operating a service which materially differs from the representations made
7 in its application for that certificate of need, the Department may bring an action in
8 Wake County Superior Court or the superior court of any county in which the certificate
9 of need is to be utilized for injunctive relief, temporary or permanent, requiring the
10 recipient, or its successor, to materially comply with the representations in its
11 application. The Department may also bring an action in Wake County Superior Court
12 or the superior court of any county in which the certificate of need is to be utilized to
13 enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in
14 accordance with this subsection and G.S. 131E-181(b)."

15 Sec. 12. This act is effective upon ratification. This act does not apply to any
16 matters currently in litigation and it is not intended to impact in any manner those
17 matters currently in litigation.