

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1048*

Short Title: CON Modifications.

(Public)

Sponsors: Senators Hartsell, Hoyle; Ballantine, Garwood, and Shaw of Cumberland.

Referred to: Judiciary.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CERTIFICATE OF NEED LAW TO CHANGE THE DETERMINATIVE EFFECT OF THE STATE MEDICAL FACILITIES PLAN'S NEED DETERMINATIONS TO PRESUMPTIVE EFFECTS AND TO REQUIRE CONSIDERATION OF ANY SPECIFIC NEED THAT MAY REBUT THE PRESUMPTION AND TO CLARIFY THAT THE STATE MEDICAL FACILITIES PLAN MUST BE ADOPTED AS RULES PURSUANT TO THE NORTH CAROLINA ADMINISTRATIVE PROCEDURE ACT AND MAY BE CHALLENGED IN CONTESTED CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-177 reads as rewritten:

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

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

(1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules pursuant to Chapter 150B of the General Statutes, to carry out the purposes and provisions of this Article;

- 1 (2) Adopt, amend, and repeal such rules and regulations, consistent with the
2 laws of this State, as may be required by the federal government for
3 grants-in-aid for health service facilities and health planning which may
4 be made available by the federal government. This section shall be
5 liberally construed in order that the State and its citizens may benefit
6 from such grants-in-aid;
- 7 (3) Define, by rule, procedures for submission of periodic reports by
8 persons or health service facilities subject to agency review under this
9 Article;
- 10 (4) Develop policy, criteria, and standards for health service facilities
11 ~~planning; planning.~~ The Department shall conduct statewide registration
12 and inventories of and make determinations of need for health service
13 facilities, health services as specified in G.S. 131E-176(16)f., and
14 equipment as specified in G.S. 131E-176(16)f1., which shall include
15 consideration of adequate geographic location of equipment and
16 ~~services; services,~~ and develop a State Medical Facilities ~~Plan; Plan.~~ The
17 Department shall adopt as rules, pursuant to Chapter 150B of the
18 General Statutes, any provisions of the State Medical Facilities Plan or
19 any other need determinations, criteria, plans, or standards of any type
20 before the Department may apply them to project reviews;
- 21 (5) ~~Implement, by rule, criteria for project review;~~
- 22 (6) Have the power to grant, deny, or withdraw a certificate of need and to
23 impose such sanctions as are provided for by this Article;
- 24 (7) Solicit, accept, hold and administer on behalf of the State any grants or
25 bequests of money, securities or property to the Department for use by
26 the Department in the administration of this Article; and
- 27 (8) Repealed by Session Laws 1987, c. 511, s. 1.
- 28 (9) Establish and collect fees for submitting applications for certificates of
29 need. The fee schedule established should generate sufficient revenue
30 to offset the entire cost of the certificate of need program. This fee may
31 not exceed seventeen thousand five hundred dollars (\$17,500) and may
32 not be less than two thousand dollars (\$2,000). Fees collected under
33 this subdivision shall be credited to the General Fund as nontax revenue.
- 34 (10) The authority to review all records in any recording medium of any
35 person or health service facility subject to agency review under this
36 Article which pertain to construction and acquisition activities, staffing
37 or costs and charges for patient care, including but not limited to,
38 construction contracts, architectural contracts, consultant contracts,
39 purchase orders, cancelled checks, accounting and financial records,
40 debt instruments, loan and security agreements, staffing records,
41 utilization statistics and any other records the Department deems to be
42 reasonably necessary to determine compliance with this Article.

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

3 Section 2. G.S. 131E-183(a)(1) reads as rewritten:

4 "(1) The proposed project shall be consistent with applicable policies and
5 need determinations in the State Medical Facilities Plan, the need
6 ~~determination-determinations~~ of which ~~constitutes a determinative limitation~~
7 constitute presumptive limitations on the provision of any health
8 service, health service facility, health service facility beds, dialysis
9 stations, ambulatory surgical operating rooms, or home health offices
10 that may be approved. The applicant or any affected person may
11 provide information that demonstrates specific need for the proposed
12 project, and the Department shall consider this information and
13 determine its effect in rebutting the Plan's presumptive limitations."

14 Section 3. G.S. 131E-188(a) reads as rewritten:

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

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

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

40 The administrative law judge or hearing officer assigned to a case may extend the
41 deadlines in subdivisions (2) through (4) so long as the administrative law judge or
42 hearing officer makes his recommended decision in the case within 270 days after the

- 1 petition is filed. The Department may extend the deadline in subdivision (5) for up to 30
2 days by giving all parties written notice of the extension."
3 Section 4. This act becomes effective October 1, 1997.