

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1162*

Short Title: CON Modifications.

(Public)

Sponsors: Representatives C. Wilson; Adams, Aldridge, Allred, Arnold, Barbee, Berry, Boyd-McIntyre, Braswell, Brown, Buchanan, Capps, Carpenter, Cole, Crawford, Creech, Davis, Decker, Dedmon, Dickson, Earle, Easterling, Eddins, Gardner, Grady, Gulley, Hardy, Hiatt, Hill, Howard, Justus, Kiser, Mitchell, Moore, Morris, Nichols, Rayfield, Sexton, Shubert, Smith, Starnes, Sutton, Tallent, Wainwright, Watson, Weatherly, G. Wilson, Womble, and Wood.

Referred to: Insurance.

April 28, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE CERTIFICATE OF NEED LAW TO CHANGE THE
3 DETERMINATIVE EFFECT OF THE STATE MEDICAL FACILITIES PLAN'S
4 NEED DETERMINATIONS TO PRESUMPTIVE EFFECTS AND TO REQUIRE
5 CONSIDERATION OF ANY SPECIFIC NEED THAT MAY REBUT THE
6 PRESUMPTION AND TO CLARIFY THAT THE STATE MEDICAL FACILITIES
7 PLAN MUST BE ADOPTED AS RULES PURSUANT TO THE NORTH
8 CAROLINA ADMINISTRATIVE PROCEDURE ACT AND MAY BE
9 CHALLENGED IN CONTESTED CASES.

10 The General Assembly of North Carolina enacts:

11 Section 1. G.S. 131E-177 reads as rewritten:
12 "§ 131E-177. Department of Human Resources is designated State Health Planning
13 and Development Agency; powers and duties.

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

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

1 or costs and charges for patient care, including but not limited to,
2 construction contracts, architectural contracts, consultant contracts,
3 purchase orders, cancelled checks, accounting and financial records,
4 debt instruments, loan and security agreements, staffing records,
5 utilization statistics and any other records the Department deems to be
6 reasonably necessary to determine compliance with this Article.

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

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

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

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

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

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

- 34 (1) An administrative law judge or a hearing officer, as appropriate, shall be
35 assigned within 15 days after a petition is filed.
- 36 (2) The parties shall complete discovery within 90 days after the
37 assignment of the administrative law judge or hearing officer.
- 38 (3) The hearing at which sworn testimony is taken and evidence is
39 presented shall be held within 45 days after the end of the discovery
40 period.
- 41 (4) The administrative law judge or hearing officer shall make his
42 recommended decision within 75 days after the hearing.

1 (5) The Department shall make its final decision within 30 days of
2 receiving the official record of the case from the Office of
3 Administrative Hearings.

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

9 Section 4. This act becomes effective October 1, 1997.