

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

3

SENATE BILL 804
Health Care Committee Substitute Adopted 5/13/09
House Committee Substitute Favorable 6/25/09

Short Title: CON Changes.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE CERTIFICATE OF NEED LAW WITH RESPECT
3 TO TIME LINES FOR ISSUANCE OF A CERTIFICATE OF NEED.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 131E-187 reads as rewritten:

6 "§ 131E-187. Issuance of a certificate of need.

7 ~~(a) The Department shall issue a certificate of need within 35 days of the date of the~~
8 ~~decision referenced in G.S. 131E-186, when no request for a contested case hearing has been~~
9 ~~filed in accordance with G.S. 131E-188, and all applicable conditions of approval that can be~~
10 ~~satisfied before issuance of the certificate of need have been met.~~

11 ~~(b) The Department shall issue a certificate of need within five days after a request for a~~
12 ~~contested case hearing has been withdrawn or the final agency decision has been made~~
13 ~~following a contested case hearing, and all applicable conditions of approval that can be~~
14 ~~satisfied before issuance of the certificate of need have been met.~~

15 The Department shall issue a certificate of need in accordance with the time line
16 requirements of this section but only after all applicable conditions of approval that can be
17 satisfied before issuance of the certificate of need have been met. The Department shall issue a
18 certificate of need within:

- 19 (1) Thirty-five days of the date of the decision referenced in G.S. 131E-186,
20 when no request for a contested case hearing has been filed in accordance
21 with G.S. 131E-188.
- 22 (2) Five business days after it receives a file-stamped copy of the notice of
23 voluntary dismissal, unless the voluntary dismissal is a stipulation of
24 dismissal without prejudice.
- 25 (3) Thirty-five days of the date of the written notice of the final agency decision
26 affirming or approving the issuance, unless a notice of appeal to the North
27 Carolina Court of Appeals is timely filed.
- 28 (4) Twenty days after a mandate is issued by the North Carolina Court of
29 Appeals affirming the issuance of a certificate of need, unless a notice of
30 appeal or petition for discretionary review to the North Carolina Supreme
31 Court is timely filed.
- 32 (5) Five business days after the North Carolina Supreme Court issues a mandate
33 affirming the issuance of a certificate of need or an order declining to certify
34 the case for discretionary review if the order declining to certify the case
35 disposes of the appeal in its entirety."

36 SECTION 2. G.S. 131E-188(b1) reads as rewritten:



1 "(b1) Before filing an appeal of a final decision by the Department granting a certificate
2 of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals.

3 (1) The bond shall be secured by cash or its equivalent in an amount equal to
4 five percent (5%) of the cost of the proposed new institutional health service
5 that is the subject of the appeal, but may not be less than five thousand
6 dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000).
7 Provided that the holder of the certificate of need may petition the Court of
8 Appeals for a higher bond amount for the payment of such costs and
9 damages as may be awarded pursuant to subdivision (2) of this subsection.
10 This amount shall be determined by the Court in its discretion, not to exceed
11 three hundred thousand dollars (\$300,000). A holder of a certificate of need
12 who is appealing only a condition in the certificate is not required to file a
13 bond under this subsection.

14 (2) If the Court of Appeals finds that the appeal was frivolous or filed to delay
15 the applicant, the court shall remand the case to the superior court of the
16 county where a bond was filed for the contested case hearing on the
17 certificate of need. The superior court may award the holder of the certificate
18 of need part or all of the bond. The court shall award the holder of the
19 certificate of need reasonable attorney fees and costs incurred in the appeal
20 to the Court of Appeals. If the Court of Appeals does not find that the appeal
21 was frivolous or filed to delay the applicant and does not remand the case to
22 superior court for a possible award of all or part of the bond to the holder of
23 the certificate of need, the person originally filing the bond shall be entitled
24 to a return of the bond."

25 **SECTION 3.** This act becomes effective September 1, 2009, and applies to all final
26 agency decisions made on or after that date.