

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 804
Health Care Committee Substitute Adopted 5/13/09
House Committee Substitute Favorable 6/25/09
House Committee Substitute #2 Favorable 7/7/09

Short Title: CON Changes.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE CERTIFICATE OF NEED LAW WITH RESPECT TO TIME LINES FOR ISSUANCE OF A CERTIFICATE OF NEED; TO MODIFY BOND REQUIREMENTS FOR APPEALS; TO PROHIBIT THE APPROVAL OF A CERTIFICATE OF NEED FOR CERTAIN TYPES OF EMERGENCY DEPARTMENTS FOR A SPECIFIED TIME PERIOD; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE LICENSURE OF HOSPITAL-BASED OFF-SITE EMERGENCY DEPARTMENTS.

The General Assembly of North Carolina enacts:

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

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

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

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Department shall issue a certificate of need within five days after a request for a contested case hearing has been withdrawn or the final agency decision has been made following a contested case hearing, and all applicable conditions of approval that can be satisfied before issuance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

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

- (1) Thirty-five days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188.
- (2) Five business days after it receives a file-stamped copy of the notice of voluntary dismissal, unless the voluntary dismissal is a stipulation of dismissal without prejudice.
- (3) Thirty-five days of the date of the written notice of the final agency decision affirming or approving the issuance, unless a notice of appeal to the North Carolina Court of Appeals is timely filed.
- (4) Twenty days after a mandate is issued by the North Carolina Court of Appeals affirming the issuance of a certificate of need, unless a notice of



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1 appeal or petition for discretionary review to the North Carolina Supreme
2 Court is timely filed.

3 (5) Five business days after the North Carolina Supreme Court issues a mandate
4 affirming the issuance of a certificate of need or an order declining to certify
5 the case for discretionary review if the order declining to certify the case
6 disposes of the appeal in its entirety."

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

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

10 (1) The bond shall be secured by cash or its equivalent in an amount equal to
11 five percent (5%) of the cost of the proposed new institutional health service
12 that is the subject of the appeal, but may not be less than five thousand
13 dollars (\$5,000) and may not exceed fifty thousand dollars
14 ~~(\$50,000)~~ (\$50,000); provided that the applicant who received approval of
15 the certificate of need may petition the Court of Appeals for a higher bond
16 amount for the payment of such costs and damages as may be awarded
17 pursuant to subdivision (2) of this subsection. This amount shall be
18 determined by the Court in its discretion, not to exceed three hundred
19 thousand dollars (\$300,000). A holder of a certificate of need who is
20 appealing only a condition in the certificate is not required to file a bond
21 under this subsection.

22 (2) If the Court of Appeals finds that the appeal was frivolous or filed to delay
23 the applicant, the court shall remand the case to the superior court of the
24 county where a bond was filed for the contested case hearing on the
25 certificate of need. The superior court may award the holder of the certificate
26 of need part or all of the bond. The court shall award the holder of the
27 certificate of need reasonable attorney fees and costs incurred in the appeal
28 to the Court of Appeals. If the Court of Appeals does not find that the appeal
29 was frivolous or filed to delay the applicant and does not remand the case to
30 superior court for a possible award of all or part of the bond to the holder of
31 the certificate of need, the person originally filing the bond shall be entitled
32 to a return of the bond."

33 **SECTION 3.1.** The Department of Health and Human Services shall not approve a
34 certificate of need for a certificate of need application filed after the effective date of this act to
35 develop a hospital-based, off-site emergency department unless the application is for a hospital-
36 based, off-site emergency department that is proposed to be operated under the license of a
37 hospital with licensed and operational acute care beds and to be located within the same county
38 as that hospital.

39 **SECTION 3.2.** The Department of Health and Human Services shall study whether
40 a hospital-based, off-site emergency department should be required to be licensed as part of a
41 general acute care hospital and to be located within the same county as that hospital. The
42 Department shall report those findings to the Joint Legislative Health Care Oversight
43 Committee by December 31, 2010.

44 **SECTION 4.** This act is effective when it becomes law. Sections 1 and 2 apply to
45 all final agency decisions made on or after that date. Section 3.1 of this act does not apply to
46 any pending certificate of need application for a hospital-based, off-site emergency department
47 but does apply to any certificate of need application for a hospital-based, off-site emergency
48 department submitted to the Department of Health and Human Services on or after the effective
49 date of this act. Section 3.1 of this act expires June 30, 2011.