

By Senator Klein

28-1689-02

See HB 1605

1 A bill to be entitled
2 An act relating to certificates of need;
3 amending s. 408.039, F.S.; revising conditions
4 under which existing health care facilities may
5 initiate or intervene in an administrative
6 hearing to challenge the issuance or denial of
7 a certificate of need; providing requirements
8 for such facilities; requiring such facilities
9 to pay specified costs under certain
10 circumstances; providing an effective date.

12 Be It Enacted by the Legislature of the State of Florida:

14 Section 1. Paragraph (c) of subsection (5) of section
15 408.039, Florida Statutes, is amended to read:

16 408.039 Review process.--The review process for
17 certificates of need shall be as follows:

18 (5) ADMINISTRATIVE HEARINGS.--

19 (c) In administrative proceedings challenging the
20 issuance or denial of a certificate of need, only applicants
21 considered by the agency in the same batching cycle are
22 entitled to a comparative hearing on their applications.
23 Existing health care facilities may initiate or intervene in
24 an administrative hearing only upon a showing that ~~an~~
25 ~~established program will be substantially affected by the~~
26 issuance of any certificate of need, whether reviewed under s.
27 408.036(1) or (2), to a competing proposed facility or program
28 within the same district will create a substantial likelihood
29 that an established program will be forced into imminent
30 closure. An existing facility seeking to initiate or intervene
31 in such proceeding shall be required to place in escrow an

1 amount equal to the proposed project cost, but in no case less
2 than \$500,000. Should the challenge to a certificate of need
3 application fail, and the application be approved by a final
4 order not subject to appeal, the challenging existing facility
5 shall pay all costs of litigation, including attorney fees, as
6 well as the value of net revenues lost due to the delay in
7 implementation of the proposed project caused by such
8 litigation, to be determined by an administrative law judge of
9 the Division of Administrative Hearings. Such amounts shall be
10 taken first from the escrow account established for this
11 purpose, the balance to be considered enforceable as an
12 obligation created by final order of the agency. The
13 challenging facility may satisfy the escrow requirement with a
14 bond of sufficient type and amount.

15 Section 2. This act shall take effect July 1, 2002.

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17 HOUSE SUMMARY

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19 Revises conditions under which existing health care
20 facilities may initiate or intervene in an administrative
21 hearing to challenge the issuance or denial of a
22 certificate of need. Requires such facilities to place
23 specified amounts in an escrow account and to pay the
24 costs of litigation, and revenues lost due to delay,
25 should the challenge fail.
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