



HB 1293

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1 A bill to be entitled

2 An act relating to certificates of need; amending s.
3 408.039, F.S.; eliminating the requirement that an
4 existing health care facility must be in the same district
5 to initiate or intervene in an administrative hearing
6 regarding the issuance of a certificate of need; requiring
7 health care facilities that challenge the issuance of a
8 certificate of need to post bond or establish an escrow
9 account; providing for an award and recovery of certain
10 costs and revenue losses by successful certificate of need
11 applicants from facilities that challenge the issuance of
12 the certificate of need; providing for the award to be
13 made by an administrative law judge and to be enforceable
14 as an agency final order; providing an effective date.

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

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18 Section 1. Subsection (5) of section 408.039, Florida
19 Statutes, is amended to read:

20 408.039 Review process.--The review process for
21 certificates of need shall be as follows:

22 (5) ADMINISTRATIVE HEARINGS.--

23 (a) Within 21 days after publication of notice of the
24 State Agency Action Report and Notice of Intent, any person
25 authorized under paragraph (c) to participate in a hearing may
26 file a request for an administrative hearing; failure to file a
27 request for hearing within 21 days of publication of notice
28 shall constitute a waiver of any right to a hearing and a waiver
29 of the right to contest the final decision of the agency. A copy
30 of the request for hearing shall be served on the applicant.



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31 (b) Hearings shall be held in Tallahassee unless the
32 administrative law judge determines that changing the location
33 will facilitate the proceedings. The agency shall assign
34 proceedings requiring hearings to the Division of Administrative
35 Hearings of the Department of Management Services within 10 days
36 after the time has expired for requesting a hearing. Except upon
37 unanimous consent of the parties or upon the granting by the
38 administrative law judge of a motion of continuance, hearings
39 shall commence within 60 days after the administrative law judge
40 has been assigned. All parties, except the agency, shall bear
41 their own expense of preparing a transcript. In any application
42 for a certificate of need which is referred to the Division of
43 Administrative Hearings for hearing, the administrative law
44 judge shall complete and submit to the parties a recommended
45 order as provided in ss. 120.569 and 120.57. The recommended
46 order shall be issued within 30 days after the receipt of the
47 proposed recommended orders or the deadline for submission of
48 such proposed recommended orders, whichever is earlier. The
49 division shall adopt procedures for administrative hearings
50 which shall maximize the use of stipulated facts and shall
51 provide for the admission of prepared testimony.

52 (c) In administrative proceedings challenging the issuance
53 or denial of a certificate of need, only applicants considered
54 by the agency in the same batching cycle are entitled to a
55 comparative hearing on their applications. ~~Existing health care~~
56 ~~facilities may initiate or intervene in an administrative~~
57 ~~hearing upon a showing that an established program will be~~
58 ~~substantially affected by the issuance of any certificate of~~
59 ~~need, whether reviewed under s. 408.036(1) or (2), to a~~
60 ~~competing proposed facility or program within the same district.~~



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61 (d)1. A facility seeking to challenge or intervene in the
62 issuance of a certificate of need shall be required to place in
63 escrow or acquire and provide a bond in an amount equal to 25
64 percent of the proposed project cost or \$500,000, whichever is
65 greater.

66 2. Should the challenge to a certificate of need
67 application fail and the application be approved in a final
68 order no longer subject to appeal, the applicant may recover
69 from the challenging facility all costs of litigation, including
70 a reasonable attorney's fee, as well as the value of the net
71 revenue lost by the applicant as a result of the delay in
72 issuance caused by the challenge. The amount of the costs and
73 lost revenues shall be determined by an administrative law judge
74 of the Division of Administrative Hearings as a final order.

75 3. An award provided under subparagraph 2. shall be
76 recovered from the escrow account established under subparagraph
77 1. If the amount in the escrow account is insufficient to cover
78 the total amount to be recovered, the balance shall be
79 enforceable as an obligation created by final order of the
80 agency.

81 4. In lieu of establishing the escrow account required
82 under subparagraph 1., a bond in the same or greater amount may
83 be provided to satisfy such requirement.

84 (e)(d) The applicant's failure to strictly comply with the
85 requirements of s. 408.037(1) or paragraph (2)(c) is not cause
86 for dismissal of the application, unless the failure to comply
87 impairs the fairness of the proceeding or affects the
88 correctness of the action taken by the agency.

89 (f)(e) The agency shall issue its final order within 45
90 days after receipt of the recommended order. If the agency fails



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91 to take action within such time, or as otherwise agreed to by
92 the applicant and the agency, the applicant may take appropriate
93 legal action to compel the agency to act. When making a
94 determination on an application for a certificate of need, the
95 agency is specifically exempt from the time limitations provided
96 in s. 120.60(1).

97 Section 2. This act shall take effect July 1, 2003.