

By the Committee on Health and Human Services Appropriations;
and Senator Peadar

603-06507-08

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1 A bill to be entitled

2 An act relating to certificates of need; amending s.
3 408.035, F.S.; revising the requirements for the Agency
4 for Health Care Administration with respect to reviewing
5 an application for a certificate of need for a general
6 hospital; amending s. 408.037, F.S.; revising the
7 requirements for an application for a certificate of need
8 by an applicant for a general hospital; amending s.
9 408.039, F.S.; prohibiting an applicant for a general
10 hospital that is awaiting issuance of a final order from
11 filing a letter of intent to file an application; limiting
12 the period of a continuance that may be granted with
13 respect to an administrative hearing considering an
14 application for a general hospital; requiring that the
15 party appealing a final order granting a certificate of
16 need for a general hospital pay the appellee's attorney's
17 fees and costs and post a bond to maintain the appeal;
18 repealing s. 408.040(3), F.S., relating to a requirement
19 for an architect's certification of final payment before
20 issuance of a certificate of need; providing for
21 application of the act; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 408.035, Florida Statutes, is amended to
26 read:

27 408.035 Review criteria.--

28 (1) The agency shall determine the reviewability of
29 applications and shall review applications for certificate-of-

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30 need determinations for health care facilities and health
31 services in context with the following criteria, except for
32 general hospitals as defined in s. 395.002:

33 (a)~~(1)~~ The need for the health care facilities and health
34 services being proposed.

35 (b)~~(2)~~ The availability, quality of care, accessibility,
36 and extent of utilization of existing health care facilities and
37 health services in the service district of the applicant.

38 (c)~~(3)~~ The ability of the applicant to provide quality of
39 care and the applicant's record of providing quality of care.

40 (d)~~(4)~~ The availability of resources, including health
41 personnel, management personnel, and funds for capital and
42 operating expenditures, for project accomplishment and operation.

43 (e)~~(5)~~ The extent to which the proposed services will
44 enhance access to health care for residents of the service
45 district.

46 (f)~~(6)~~ The immediate and long-term financial feasibility of
47 the proposal.

48 (g)~~(7)~~ The extent to which the proposal will foster
49 competition that promotes quality and cost-effectiveness.

50 (h)~~(8)~~ The costs and methods of the proposed construction,
51 including the costs and methods of energy provision and the
52 availability of alternative, less costly, or more effective
53 methods of construction.

54 (i)~~(9)~~ The applicant's past and proposed provision of
55 health care services to Medicaid patients and the medically
56 indigent.

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57 ~~(j)(10)~~ The applicant's designation as a Gold Seal Program
58 nursing facility pursuant to s. 400.235, when the applicant is
59 requesting additional nursing home beds at that facility.

60 (2) For a general hospital, the agency shall consider only
61 the criteria specified in paragraphs (1)(a), (b), (e), (g), and
62 (i).

63 Section 2. Section 408.037, Florida Statutes, is amended to
64 read:

65 408.037 Application content.--

66 (1) Except as provided in subsection (2) for a general
67 hospital, an application for a certificate of need must contain:

68 (a) A detailed description of the proposed project and
69 statement of its purpose and need in relation to the district
70 health plan.

71 (b) A statement of the financial resources needed by and
72 available to the applicant to accomplish the proposed project.
73 This statement must include:

74 1. A complete listing of all capital projects, including
75 new health facility development projects and health facility
76 acquisitions applied for, pending, approved, or underway in any
77 state at the time of application, regardless of whether or not
78 that state has a certificate-of-need program or a capital
79 expenditure review program pursuant to s. 1122 of the Social
80 Security Act. The agency may, by rule, require less-detailed
81 information from major health care providers. This listing must
82 include the applicant's actual or proposed financial commitment
83 to those projects and an assessment of their impact on the
84 applicant's ability to provide the proposed project.

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85 2. A detailed listing of the needed capital expenditures,
86 including sources of funds.

87 3. A detailed financial projection, including a statement
88 of the projected revenue and expenses for the first 2 years of
89 operation after completion of the proposed project. This
90 statement must include a detailed evaluation of the impact of the
91 proposed project on the cost of other services provided by the
92 applicant.

93 (c) An audited financial statement of the applicant. In an
94 application submitted by an existing health care facility, health
95 maintenance organization, or hospice, financial condition
96 documentation must include, but need not be limited to, a balance
97 sheet and a profit-and-loss statement of the 2 previous fiscal
98 years' operation.

99 (2) An application for a certificate of need for a general
100 hospital must contain a detailed description of the proposed
101 general hospital project and a statement of its purpose and need.
102 The proposed project's location, as well as its primary and
103 secondary service areas, must be identified by zip code. In
104 addition, the application for the certificate of need must
105 include a statement of intent that, if approved by final order of
106 the agency, the application for licensure pursuant to ss. 395.003
107 and 408.810 will include the items specified in subparagraph
108 (1) (b) 3. and paragraph (1) (c).

109 (3)~~(2)~~ The applicant must certify that it will license and
110 operate the health care facility. For an existing health care
111 facility, the applicant must be the licenseholder of the
112 facility.

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113 Section 3. Paragraph (a) of subsection (2), paragraph (b)
114 of subsection (3), and paragraph (b) of subsection (5) of section
115 408.039, Florida Statutes, are amended, and paragraph (d) is
116 added to subsection (6) of that section, to read:

117 408.039 Review process.--The review process for
118 certificates of need shall be as follows:

119 (2) LETTERS OF INTENT.--

120 (a) At least 30 days prior to filing an application, a
121 letter of intent shall be filed by the applicant with the agency,
122 respecting the development of a proposal subject to review. A
123 letter of intent may not be filed by an applicant for approval of
124 a general hospital that was previously reviewed by the agency and
125 that is awaiting issuance of a final order pursuant to paragraph
126 (5) (e). No letter of intent is required for expedited projects as
127 defined by rule by the agency.

128 (3) APPLICATION PROCESSING.--

129 (b) Upon the request of any applicant or substantially
130 affected person within 14 days after notice that an application
131 has been filed, a public hearing may be requested by the
132 interested parties held at the agency's discretion if the agency
133 determines that a proposed project involves issues of great local
134 public interest. The public hearing shall allow applicants and
135 other interested parties reasonable time to present their
136 positions and to present rebuttal information. A recorded
137 verbatim record of the hearing shall be maintained. The public
138 hearing shall be held at the local level within 21 days after the
139 application is deemed complete.

140 (5) ADMINISTRATIVE HEARINGS.--

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141 (b) Hearings shall be held in Tallahassee unless the
142 administrative law judge determines that changing the location
143 will facilitate the proceedings. The agency shall assign
144 proceedings requiring hearings to the Division of Administrative
145 Hearings of the Department of Management Services within 10 days
146 after the time has expired for requesting a hearing. Except upon
147 unanimous consent of the parties or upon the granting by the
148 administrative law judge of a motion of continuance, hearings
149 shall commence within 60 days after the administrative law judge
150 has been assigned. For an application for a general hospital, a
151 continuance may not be granted for longer than 4 months following
152 the original date of assignment to the administrative law judge.
153 All parties, except the agency, shall bear their own expense of
154 preparing a transcript. In any application for a certificate of
155 need which is referred to the Division of Administrative Hearings
156 for hearing, the administrative law judge shall complete and
157 submit to the parties a recommended order as provided in ss.
158 120.569 and 120.57. The recommended order shall be issued within
159 30 days after the receipt of the proposed recommended orders or
160 the deadline for submission of such proposed recommended orders,
161 whichever is earlier. The division shall adopt procedures for
162 administrative hearings which shall maximize the use of
163 stipulated facts and shall provide for the admission of prepared
164 testimony.

165 (6) JUDICIAL REVIEW.--

166 (d) The party appealing a final order granting a general
167 hospital certificate of need shall pay the appellee's attorney's
168 fees and costs, in an amount up to \$1 million, from the beginning
169 of the original administrative action if the appealing party

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170 loses the appeal. Except as provided in s. 120.595(5), the agency
171 may not be held liable for any other party's attorney's fees and
172 costs. The party appealing a final order must post a bond in the
173 amount of \$1 million in order to maintain the appeal.

174 Section 4. Subsection (3) of section 408.040, Florida
175 Statutes, is repealed.

176 Section 5. The provisions of this act do not apply to a
177 project that is under initial review by the Agency for Health
178 Care Administration on the effective date of this act if an
179 initial decision pursuant to s. 408.039, Florida Statutes, has
180 not been made.

181 Section 6. This act shall take effect upon becoming a law.