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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.; requiring the agency to attend public
10 hearings on such applications; requiring an existing
11 hospital to submit a written statement of opposition in
12 order to challenge the agency decision on an application
13 for a certificate of need for a general hospital;
14 authorizing the applicant to submit a written response;
15 limiting filing a letter of intent to file an application;
16 limiting the period of a continuance that may be granted
17 with respect to an administrative hearing considering an
18 application for a general hospital; limiting the parties
19 who may challenge in an administrative hearing involving
20 an application for a certificate of need; limiting the
21 scope of the challenge; authorizing the administrative
22 judge to expand the scope of the issues to be heard upon a
23 motion showing good cause; requiring that the party
24 appealing a final order granting a certificate of need for
25 a general hospital pay the appellee's attorney's fees and
26 costs subject to certain requirements; providing that the
27 agency may not be held liable for any other party's
28 attorney's fees or costs; repealing s. 408.040(3), F.S.;
29 relating to a requirement for an architect's certification

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30 of final payment before issuance of a certificate of need;
31 providing for application of the act; providing for
32 severability; providing an effective date.
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34 Be It Enacted by the Legislature of the State of Florida:
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36 Section 1. Section 408.035, Florida Statutes, is amended to
37 read:

38 408.035 Review criteria.--

39 (1) The agency shall determine the reviewability of
40 applications and shall review applications for certificate-of-
41 need determinations for health care facilities and health
42 services in context with the following criteria, except for
43 general hospitals as defined in s. 395.002:

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

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

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

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

54 (e)~~(5)~~ The extent to which the proposed services will
55 enhance access to health care for residents of the service
56 district.

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

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

61 ~~(h)(8)~~ The costs and methods of the proposed construction,
62 including the costs and methods of energy provision and the
63 availability of alternative, less costly, or more effective
64 methods of construction.

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

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

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

74 Section 2. Section 408.037, Florida Statutes, is amended to
75 read:

76 408.037 Application content.--

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

79 (a) A detailed description of the proposed project and
80 statement of its purpose and need in relation to the district
81 health plan.

82 (b) A statement of the financial resources needed by and
83 available to the applicant to accomplish the proposed project.
84 This statement must include:

85 1. A complete listing of all capital projects, including
86 new health facility development projects and health facility
87 acquisitions applied for, pending, approved, or underway in any

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88 state at the time of application, regardless of whether or not
89 that state has a certificate-of-need program or a capital
90 expenditure review program pursuant to s. 1122 of the Social
91 Security Act. The agency may, by rule, require less-detailed
92 information from major health care providers. This listing must
93 include the applicant's actual or proposed financial commitment
94 to those projects and an assessment of their impact on the
95 applicant's ability to provide the proposed project.

96 2. A detailed listing of the needed capital expenditures,
97 including sources of funds.

98 3. A detailed financial projection, including a statement
99 of the projected revenue and expenses for the first 2 years of
100 operation after completion of the proposed project. This
101 statement must include a detailed evaluation of the impact of the
102 proposed project on the cost of other services provided by the
103 applicant.

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

110 (2) An application for a certificate of need for a general
111 hospital must contain a detailed description of the proposed
112 general hospital project and a statement of its purpose and the
113 needs it will meet. The proposed project's location, as well as
114 its primary and secondary service areas, must be identified by
115 zip code. Primary service area is defined as the zip codes from
116 which the applicant projects that it will draw 75 percent of its

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117 discharges. Secondary service area is defined as the zip codes
118 from which the applicant projects that it will draw its remaining
119 discharges. In addition, the application for the certificate of
120 need must include a statement of intent that, if approved by
121 final order of the agency, the application for licensure pursuant
122 to ss. 395.003 and 408.810 will include the items found in
123 subparagraph (1)(b)3. and paragraph (1)(c).

124 (3)~~(2)~~ The applicant must certify that it will license and
125 operate the health care facility. For an existing health care
126 facility, the applicant must be the licenseholder of the
127 facility.

128 Section 3. Subsection (3), paragraphs (b) and (c) of
129 subsection (5), and paragraph (d) is added to subsection (6) of
130 section 408.039, Florida Statutes, to read:

131 408.039 Review process.--The review process for
132 certificates of need shall be as follows:

133 (3) APPLICATION PROCESSING.--

134 (a) An applicant shall file an application with the agency
135 and shall furnish a copy of the application to the agency. Within
136 15 days after the applicable application filing deadline
137 established by agency rule, the staff of the agency shall
138 determine if the application is complete. If the application is
139 incomplete, the staff shall request specific information from the
140 applicant necessary for the application to be complete; however,
141 the staff may make only one such request. If the requested
142 information is not filed with the agency within 21 days after the
143 receipt of the staff's request, the application shall be deemed
144 incomplete and deemed withdrawn from consideration.

145 (b) Upon the request of any applicant or substantially

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146 affected person within 14 days after notice that an application
147 has been filed, a public hearing may be held at the agency's
148 discretion if the agency determines that a proposed project
149 involves issues of great local public interest. In such cases,
150 the agency shall attend the public hearing. The public hearing
151 shall allow applicants and other interested parties reasonable
152 time to present their positions and to present rebuttal
153 information. A recorded verbatim record of the hearing shall be
154 maintained. The public hearing shall be held at the local level
155 within 21 days after the application is deemed complete.

156 (c) Except for competing applicants, in order to be
157 eligible to challenge the agency decision on a general hospital
158 application under review pursuant to paragraph (5)(c), existing
159 hospitals must submit a detailed written statement of opposition
160 to the agency and to the applicant. The detailed written
161 statement must be received by the agency and the applicant within
162 21 days after the general hospital application is deemed
163 complete.

164 (d) In those cases where a written statement of opposition
165 has been timely filed regarding a certificate of need application
166 for a general hospital, the applicant for the general hospital
167 may submit a written response to the agency. Such response must
168 be received by the agency within 10 days of the written statement
169 due date.

170 (5) ADMINISTRATIVE HEARINGS.--

171 (b) Hearings shall be held in Tallahassee unless the
172 administrative law judge determines that changing the location
173 will facilitate the proceedings. The agency shall assign
174 proceedings requiring hearings to the Division of Administrative

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175 Hearings of the Department of Management Services within 10 days
176 after the time has expired for requesting a hearing. Except upon
177 unanimous consent of the parties or upon the granting by the
178 administrative law judge of a motion of continuance, hearings
179 shall commence within 60 days after the administrative law judge
180 has been assigned. For an application for a general hospital,
181 administrative hearings shall commence within 6 months after the
182 administrative law judge has been assigned, and a continuance may
183 not be granted absent a finding of extraordinary circumstances by
184 the administrative law judge. All parties, except the agency,
185 shall bear their own expense of preparing a transcript. In any
186 application for a certificate of need which is referred to the
187 Division of Administrative Hearings for hearing, the
188 administrative law judge shall complete and submit to the parties
189 a recommended order as provided in ss. 120.569 and 120.57. The
190 recommended order shall be issued within 30 days after the
191 receipt of the proposed recommended orders or the deadline for
192 submission of such proposed recommended orders, whichever is
193 earlier. The division shall adopt procedures for administrative
194 hearings which shall maximize the use of stipulated facts and
195 shall provide for the admission of prepared testimony.

196 (c) In administrative proceedings challenging the issuance
197 or denial of a certificate of need, only applicants considered by
198 the agency in the same batching cycle are entitled to a
199 comparative hearing on their applications. Existing health care
200 facilities may initiate or intervene in an administrative hearing
201 upon a showing that an established program will be substantially
202 affected by the issuance of any certificate of need, whether
203 reviewed under s. 408.036(1) or (2), to a competing proposed

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204 facility or program within the same district. With respect to an
205 application for a general hospital, competing applicants and only
206 those existing hospitals that submitted a detailed written
207 statement of opposition to an application as provided in this
208 paragraph may initiate or intervene in an administrative hearing.
209 Such challenges to a general hospital application shall be
210 limited in scope to the issues raised in the detailed written
211 statement of opposition that was provided to the agency. The
212 administrative law judge may, upon a motion showing good cause,
213 expand the scope of the issues to be heard at the hearing. Such
214 motion shall include substantial and detailed facts and reasons
215 for failure to include such issues in the original written
216 statement of opposition.

217 (6) JUDICIAL REVIEW.--

218 (d) The party appealing a final order that grants a general
219 hospital certificate of need shall pay the appellee's attorney's
220 fees and costs from the beginning of the original administrative
221 action if the appealing party loses the appeal, subject to the
222 following limitations and requirements:

223 1. Up to \$1 million if the appealing hospital is a
224 statutory teaching hospital pursuant to s. 408.07(45), a public
225 hospital owned or operated by a governmental entity as defined in
226 s. 395.002(11), or designated as a statutory rural hospital
227 pursuant to s. 408.07(43);

228 2. Up to \$2 million if the appealing hospital does not fall
229 within the definitions enumerated in subparagraph 1.; and

230 3. The party appealing a final order must post a bond in
231 the amount of \$1 million in order to maintain the appeal.
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233 Except as provided under s. 120.595(5), in no event shall the
234 agency be held liable for any other party's attorney's fees or
235 costs.

236 Section 4. Subsection (3) of section 408.040, Florida
237 Statutes, is repealed.

238 Section 5. The provisions of this act do not apply to a
239 certificate of need application filed before the effective date
240 of this act.

241 Section 6. If any provision of this act or its
242 application to any person or circumstance is held invalid, the
243 invalidity does not affect other provisions or applications of
244 the act which can be given effect without the invalid provision
245 or application, and to this end the provisions of this act are
246 severable.

247 Section 7. This act shall take effect upon becoming a law.