

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: PCS/SB 236 (278672)

INTRODUCER: Appropriations Subcommittee on Health and Human Services; Senators Grimsley and Gaetz

SUBJECT: Certificates of Need for Rural Hospitals

DATE: February 26, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Fav/CS
3.	_____	_____	FP	_____

I. Summary:

PCS/SB 236 modifies the eligibility criteria for a rural hospital to construct a replacement facility without first obtaining a certification of need (CON). The population density threshold is raised from less than 30 to less than 100 persons per square mile, which is consistent with the population density included in the definition of a rural hospital, and deletes a requirement for the county in which the hospital will be situated to have a population between 15,000 and 18,000 residents. The bill provides that in order for the CON exemption to be triggered, the replacement hospital may not be located within 15 miles of a currently licensed hospital in an adjacent county.

The bill has an indeterminate fiscal impact on the Agency for Health Care Administration (AHCA).

The bill's effective date is July 1, 2016.

II. Present Situation:

Florida's CON Program

Overview

In Florida, a CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited and exempt.¹ Unless a project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.

¹ Section 408.036, F.S.

Full CON Review Process

Full CON review is a lengthy process that starts with the AHCA determining need for a specific facility type or service. Upon determining that a need exists, AHCA accepts applications for CON based on batching cycles. At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with AHCA.² A letter of intent must describe the proposal, specify the number of beds sought, and identify the services to be provided and the location of the project.³ Applications for CON review must be submitted by the specified deadline for the particular batch cycle.⁴ The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.⁵ The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.⁶

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.⁷ The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.⁸ If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.⁹

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is \$10,000.¹⁰ In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure; however the total fee may not exceed \$50,000.¹¹

Projects Subject to Full CON Review

Section 408.036(1), F.S., lists projects that are required to undergo a full comparative CON review, including:

- The addition of beds by new construction or alteration in a community nursing home or intermediate care facility for the developmentally disabled;
- The new construction or establishment of additional health care facilities,¹² including the replacement of a health care facility that is not located within one mile of an existing health care facility, if the number of beds in each licensed bed category will not increase;

² Section 408.039(2)(a), F.S.

³ Section 408.039(2)(c), F.S.

⁴ Rule 59C-1.008(1)(g), F.A.C.

⁵ Section 408.039(3)(a), F.S.

⁶ Id.

⁷ Section 408.039(4)(b), F.S.

⁸ Section 408.039(4)(c), F.S.

⁹ Section 408.039(4)(d), F.S.

¹⁰ Section 408.038, F.S.

¹¹ Id.

¹² Section 408.032, F.S., defines “health care facility” as a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled.

- The conversion from one type of health care facility to another, including from a general hospital to a specialty hospital;
- The establishment of a hospice or hospice inpatient facility;
- An increase in the number of beds for comprehensive rehabilitation; and
- The establishment of tertiary health services,¹³ including inpatient comprehensive rehabilitation.

Projects Subject to Expedited CON Review

Section 408.036(2), F.S., permits certain projects to undergo expedited CON review. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include the transfer of a CON and certain replacements, relocations, and new construction of nursing homes.¹⁴

Exemptions from CON Review

Section 408.036(3), F.S., provides many exemptions to CON review. Exempted projects must only submit an application for exemption to the AHCA and pay a \$250 fee. Exempted projects include:

Hospital Exemptions

- Adding hospice services or swing beds¹⁵ in a rural hospital, the total of which does not exceed one-half of its licensed beds;
- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, F.S., so long as the conversion of the beds does not involve the construction of new facilities;
- Adding hospital beds licensed under ch. 395, F.S., for comprehensive rehabilitation, the total of which may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater;
- Establishing a Level II neonatal intensive care unit (NICU) if the unit has at least 10 beds, and if the hospital had a minimum of 1,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least 15 beds, and if the hospital had a Level II NICU and a minimum of at least 3,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least five beds, is a verified trauma center,¹⁶ and has a Level II NICU;

¹³ Tertiary health services include: pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service, heart transplantation, kidney transplantation, liver transplantation, bone marrow transplantation, lung transplantation, pancreas and islet cells transplantation, heart/lung transplantation, adult open heart surgery, neonatal and pediatric cardiac and vascular surgery, and pediatric oncology and hematology. See s. 408.032(17), F.S., and rule 59C-1.002(41), F.A.C.

¹⁴ See s. 408.036(2), F.S.

¹⁵ Section 395.602(2)(g), F.S., defines “swing bed” as a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

¹⁶ Section 395.4001(14), F.S., defines “trauma center” as a hospital that has been verified by the Department of Health to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved to operate as a Level I trauma

- Providing percutaneous coronary intervention for patients presenting with emergency myocardial infarctions in a hospital that does not have an approved adult open-heart-surgery program;¹⁷
- Adding mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients as a level equal to or greater than the district average; and
- Establishing an adult open-heart surgery program in a hospital located within the boundaries of a health service planning district, which:¹⁸
 - Has experienced an annual net out-migration of at least 600 open heart surgery cases for three consecutive years; and
 - Has a population that exceeds the state average of population per licensed and operational open-heart programs by at least 25 percent.

Rural Hospitals

Part III of ch. 395, F.S., governs rural hospitals. A rural hospital is defined in s. 395.602(2)(e), F.S., as a licensed, acute care hospital having 100 or fewer licensed beds and an emergency room which is:

- The sole provider in a county with a population density no greater than 100 persons per square mile;
- An acute care hospital in a county with a population density no greater than 100 persons per square mile which is at least 30 minutes of travel time from any other acute care hospital in the same county;
- A hospital supported by a tax district or sub-district whose boundaries encompass an area of 100 persons or fewer per square mile;
- A hospital with a service area of fewer than 100 persons per square mile, with service area being defined as the fewest number of zip codes that account for 75 percent of the hospital’s discharges for the most recent five-year period; or
- A hospital designated as a critical access hospital under s. 408.07(15), F.S.¹⁹

An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of the definition will be granted rural hospital status upon submitting an application, including supporting documentation, to the AHCA.²⁰

Currently, 28 hospitals meet the statutory definition of rural hospitals:

Rural Hospital	County	City	Beds
Baptist Medical Center - Nassau	Nassau	Fernandina Beach	62
Calhoun-Liberty Hospital	Calhoun	Blountstown	25
Campbellton-Graceville Hospital	Jackson	Graceville	25

center, Level II trauma center, or pediatric trauma center, or is designated as a Level II trauma center pursuant to s. 395.4025(14), F.S.

¹⁷ Id.

¹⁸ This exemption is obsolete and is replaced by a licensure process under s. 408.0361, F.S.

¹⁹ Section 408.07(15), F.S., defines a critical access hospital as “a hospital that meets the definition of ‘critical access hospital’ in s. 1861(mm)(1) of the Social Security Act and that is certified by the Secretary of Health and Human Services as a critical access hospital.”

²⁰ See s. 395.602(2)(e), F.S.

Rural Hospital	County	City	Beds
Desoto Memorial Hospital	Desoto	Arcadia	49
Doctors Memorial Hospital	Holmes	Bonifay	20
Doctors' Memorial Hospital Inc.	Taylor	Perry	48
Ed Fraser Memorial Hospital	Baker	MacClenny	25
Fishermen's Hospital	Monroe	Marathon	25
Florida Hospital Flagler	Flagler	Palm Coast	99
Florida Hospital Wauchula	Hardee	Wauchula	25
George E Weems Memorial Hospital	Franklin	Apalachicola	25
Healthmark Regional Medical Center	Walton	Defuniak Springs	50
Hendry Regional Medical Center	Hendry	Clewiston	25
Jackson Hospital	Jackson	Marianna	100
Jay Hospital	Santa Rosa	Jay	49
Lake Butler Hospital Hand Surgery Center	Union	Lake Butler	25
Lakeside Medical Center	Palm Beach	Belle Glade	70
Madison County Memorial Hospital	Madison	Madison	25
Mariners Hospital	Monroe	Tavernier	25
Northwest Florida Community Hospital	Washington	Chipley	59
Putnam Community Medical Center	Putnam	Palatka	99
Raulerson Hospital	Okeechobee	Okeechobee	100
Regional General Hospital Williston ²¹	Levy	Williston	40
Sacred Heart Hospital On The Emerald Coast	Walton	Miramar Beach	58
Sacred Heart Hospital On The Gulf	Gulf	Port Saint Joe	19
Shands Lake Shore Regional Medical Center	Columbia	Lake City	99
Shands Live Oak Regional Medical Center	Suwannee	Live Oak	25
Shands Starke Regional Medical Center	Bradford	Starke	49

Rural hospitals are eligible to participate in Medicaid’s rural hospital financial assistance programs under s. 409.9116, F.S. Rural hospitals may also receive special consideration in the General Appropriations Act for Medicaid reimbursement due to their rural status.

Rural Counties and Population Density

The Department of Health maintains a list of rural counties that is based on a density of less than 100 persons per square mile.²² The following list identifies Florida’s 30 rural counties and their density according to the 2010 Census.

County	Density	County	Density	County	Density
Baker	46.3	Gulf	28.6	Liberty	10.0
Bradford	97.3	Hamilton	28.7	Madison	27.8
Calhoun	25.8	Hardee	43.5	Monroe	73.3
Columbia	84.7	Hendry	34.0	Okeechobee	51.7
DeSoto	54.7	Highlands	96.1	Suwannee	60.4
Dixie	23.3	Holmes	41.3	Taylor	21.7
Franklin	21.2	Jackson	54.3	Union	64.6
Gadsden	89.9	Jefferson	24.7	Wakulla	50.7
Gilchrist	48.5	Lafayette	16.3	Walton	52.0
Glades	16.7	Levy	36.5	Washington	42.9

²¹ Formerly known as Tri County Hospital - Williston.

²² <http://www.floridahealth.gov/programs-and-services/community-health/rural-health/ documents/rual-counties-2000-2010.pdf> (last visited Feb. 2, 2016).

III. Effect of Proposed Changes:

The bill modifies the eligibility criteria for a rural hospital to construct a replacement facility without first obtaining a CON. The population density threshold is raised from less than 30 to less than 100 persons per square mile, which is consistent with the population density included in the definition of a rural hospital. The bill deletes the county population criteria of between 15,000 and 18,000 persons and provides that in order for the CON exemption to be triggered, the replacement hospital may not be located within 15 miles of a currently licensed hospital in an adjacent county. The bill also deletes the requirement that the replacement facility must be in the current primary service area and deletes the definition of service area.

The current exemption applies to 11 counties: Calhoun, Dixie*, Franklin, Glades*, Gulf, Hamilton*, Jefferson*, Lafayette*, Liberty*, Madison, and Taylor counties.

An assessment of which counties would be affected by the bill in terms of qualifying for the exemption is not yet available from the AHCA.

* These counties do not currently have a licensed hospital.

The bill is effective July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A replacement hospital over one mile from the original location costs the maximum CON fee of \$50,000. PCS/SB 236 provides the opportunity for a hospital in a rural county to avoid that cost as well as additional costs related to the CON process.

C. Government Sector Impact:

The bill could create an increase in workload at the AHCA due to a potential increase in CON applications, but the extent of that effect is indeterminate.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 395.6025 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 24, 2016:

The proposed CS:

- Specifies that the CON exemption applies to replacement hospitals;
- Deletes a requirement for the county in which the hospital will be situated to have a population between 15,000 and 18,000 residents; and
- Provides that in order for the CON exemption to be triggered, the replacement hospital may not be located within 15 miles of a currently licensed hospital in an adjacent county

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²³ *Id.*