

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 236

INTRODUCER: Senators Grimsley and Gaetz

SUBJECT: Certificates of Need for Rural Hospitals

DATE: February 4, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	<b>Pre-meeting</b>
2.			AHS	
3.			FP	

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**I. Summary:**

SB 236 modifies the eligibility criteria for a rural hospital to construct a new or 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 coincides with the population density in the definition of a rural hospital. The bill deletes the requirements that a new hospital be located in a county with a population between 15,000 and 18,000 and that the replacement, or new, facility be located within 10 miles of the site of the currently licensed rural hospital.

**II. Present Situation:**

**Florida's CON Program**

*Overview*

In Florida, a CON is a written statement issued by 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.<sup>1</sup> 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.

**Full CON Review Process**

Full CON review is a lengthy and difficult 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.<sup>2</sup> A letter of intent must

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<sup>1</sup> Section 408.036, F.S.

<sup>2</sup> Section 408.039(2)(a), F.S.

describe the proposal, specify the number of beds sought, and identify the services to be provided and the location of the project.<sup>3</sup> Applications for CON review must be submitted by the specified deadline for the particular batch cycle.<sup>4</sup> The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.<sup>5</sup> The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.<sup>6</sup>

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.<sup>7</sup> The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

### ***Projects Subject to Full CON Review***

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

- The addition of beds by new contraction 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,<sup>12</sup> including the replacement of a health care facility that is not located within 1 mile of the existing health care facility, if the number of beds in each licensed bed category will not increase;
- 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 in patient facility;
- An increase in the number of beds for comprehensive rehabilitation; and
- The establishment of tertiary health services,<sup>13</sup> including inpatient comprehensive rehabilitation.

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<sup>3</sup> Section 408.039(2)(c), F.S.

<sup>4</sup> Rule 59C-1.008(1)(g), F.A.C.

<sup>5</sup> Section 408.039(3)(a), F.S.

<sup>6</sup> Id.

<sup>7</sup> Section 408.039(4)(b), F.S.

<sup>8</sup> Section 408.039(4)(c), F.S.

<sup>9</sup> Section 408.039(4)(d), F.S.

<sup>10</sup> Section 408.038, F.S.

<sup>11</sup> Id.

<sup>12</sup> 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.

<sup>13</sup> 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

### ***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.<sup>14</sup>

### ***Exemptions from CON Review***

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

#### ***Hospital Exemptions***

- Adding hospice services or swing beds<sup>15</sup> 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, and is a verified trauma center,<sup>16</sup> and if the applicant has a Level II NICU;
- Establishing an adult open heart surgery program in a hospital located within the boundaries of a health service planning district, which:<sup>17</sup>
  - 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;

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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.

<sup>14</sup> See s. 408.036(2), F.S.

<sup>15</sup> 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.

<sup>16</sup> 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 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.

<sup>17</sup> This exemption is obsolete and is replaced by a licensure process under s. 408.0361, F.S.

- For the provision of percutaneous coronary intervention for patients presenting with emergency myocardial infarctions in a hospital that does not have an approved adult open-heart-surgery program;<sup>18</sup>
- For the addition of 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
- Constructing a new hospital or replacement facility by a statutory rural hospital or a not-for-profit operator of rural hospitals in a county with a population between 15,000 and 18,000 and a density of less than 30 persons per square mile, if the new or replacement facility is located within 10 miles of the currently licensed rural hospital and within the current primary service area.<sup>19,20</sup>

### ***General Exemptions***

Renewing a CON for a licensed facility that lost its CON due to failing to renew its license under certain circumstances.

### **Rural Hospitals**

A rural hospital is an acute care hospital having 100 or fewer licensed beds and an emergency room, which is:<sup>21</sup>

- The sole provider within a county with a population density of up to 100 persons per square mile;
- In a county with a population density of up to 100 persons per square mile, which is at least 30 minutes travel time<sup>22</sup> from any other acute care hospital within the same county;
- Supported by a tax district or sub-district whose boundaries encompass a population of up to 100 persons per square mile;
- In a service area<sup>23</sup> that has a population of up to 100 persons per square mile; or
- Designated as a critical access hospital in s. 408.07(15), F.S.<sup>24</sup>

Currently, there are 24 rural hospitals in Florida.<sup>25</sup>

<sup>18</sup> Id.

<sup>19</sup> See s. 395.6025, F.S.

<sup>20</sup> Service area for this provision is defined as the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the Florida Center at the AHCA.

<sup>21</sup> Section 395.602(2)(e), F.S.

<sup>22</sup> On normally traveled roads under normal traffic conditions.

<sup>23</sup> *Supra* note 20.

<sup>24</sup> 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. There are 13 designated critical access hospitals in Florida: Florida Hospital-Wauchula; Shands Hospital at Live Oak; Campbellton-Graceville Hospital; Lake Butler Hospital Hand Surgery Center; Calhoun - Liberty Hospital in Blountstown; George E. Weems Hospital in Apalachicola; Doctor's Memorial Hospital – Bonifay; Northwest Florida Community Hospital in Chipley; Hendry RMC in Clewiston; Shands at Starke; Madison County Memorial Hospital; Fisherman's Hospital in Marathon, and Mariners Hospital in Tavernier. See Flex Monitoring Team - Complete list of CAHs, available at: <http://www.flexmonitoring.org/data/critical-access-hospital-locations/>, (last visited February 2, 2016).

<sup>25</sup> Agency for Health Care Administration, *Senate Bill 236 Analysis* (September 9, 2015) (on file with the Senate Committee on Health Policy)

<b>County</b>	<b>Hospital</b>
Baker	Ed Fraser Memorial Hospital
Bradford	Shands Starke Regional Medical Center
Calhoun	Calhoun-Liberty Hospital
Columbia	Shands Lake Shore Regional Medical Center
DeSoto	DeSoto Memorial Hospital
Franklin	George E Weems Memorial Hospital
Gadsden	Capital Regional Medical Center, Gadsden Memorial Campus
Gulf	Sacred Heart Hospital on the Gulf
Hardee	Florida Hospital Wauchula
Hendry	Hendry Regional Medical Center
Holmes	Doctors Memorial Hospital
Jackson	Campbellton-Graceville Hospital
Jackson	Jackson Hospital
Levy	Regional General Hospital Williston
Madison	Madison County Memorial Hospital
Monroe	Fishermen’s Hospital
Monroe	Mariners Hospital
Okeechobee	Raulerson Hospital
Suwannee	Shands Live Oak Regional Medical Center
Taylor	Doctors’ Memorial Hospital
Union	Lake Butler Hospital
Walton	Healthmark Regional Medical Center
Walton	Sacred Heart Hospital On The Emerald Coast
Washington	Northwest Florida Community Hospital

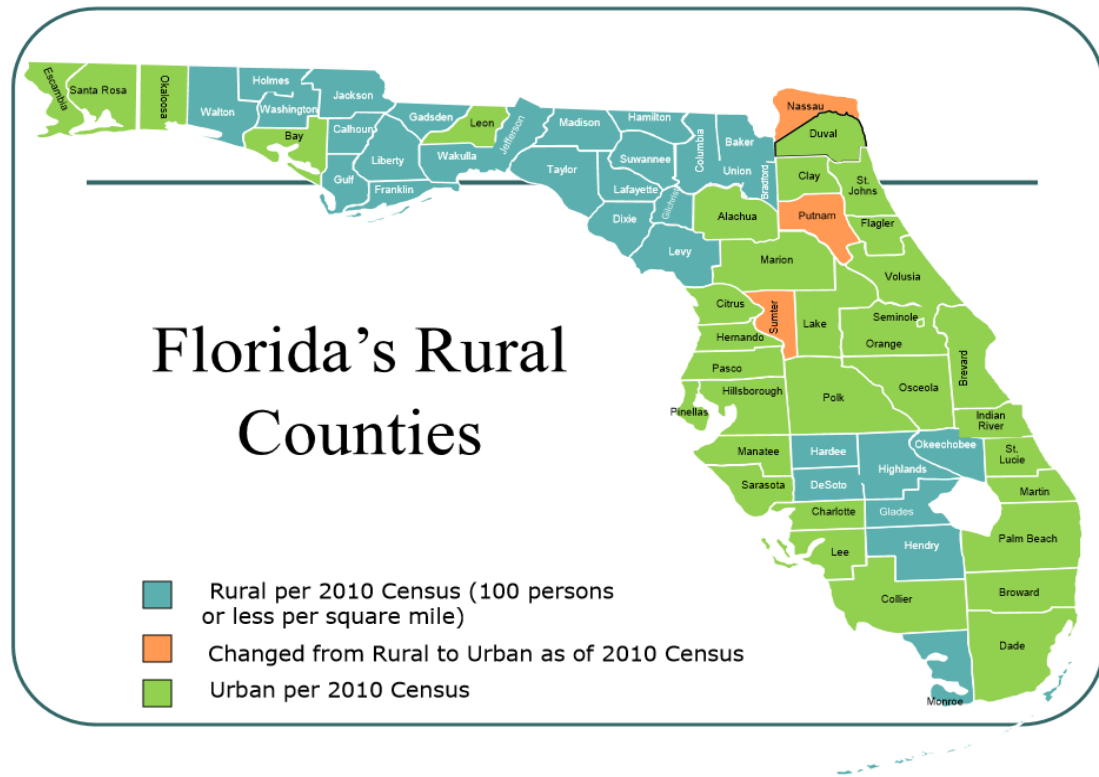
**Rural Counties and Population Density**

The Department of Health maintains a list of rural counties that is based on a density of less than 100 persons per square mile.<sup>26</sup> The following list identifies Florida’s 30 rural counties and their density according to the 2010 Census.

<b>County</b>	<b>Density</b>	<b>County</b>	<b>Density</b>	<b>County</b>	<b>Density</b>
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

<sup>26</sup> <http://www.floridahealth.gov/programs-and-services/community-health/rural-health/ documents/rual-counties-2000-2010.pdf> (last visited Feb. 2, 2016).

The following map depicts these rural counties geographically.<sup>27</sup>



**III. Effect of Proposed Changes:**

The bill modifies the eligibility criteria for a rural hospital to construct a new or 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 coincides with the population density in the definition of a rural hospital. The bill removes the county population criteria of between 15,000 and 18,000 persons and the requirement that the new or replacement facility be located within 10 miles of the site of the currently licensed rural hospital. The requirement that the new or replacement facility must be in the current primary service area remains unchanged.

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

The increase in population density adds the following 19 counties to the exemption: Baker, Bradford, Columbia, DeSoto, Gadsden, Gilchrist\*, Hardee, Hendry, Highlands, Holmes, Jackson, Levy, Monroe, Okeechobee, Suwannee, Union, Wakulla\*, Walton, and Washington.

<sup>27</sup> <http://www.floridahealth.gov/provider-and-partner-resources/community-health-workers/health-professional-shortage-designations/Rural%20Counties%20Map%202016.pdf> (last visited Feb. 2, 2016).

Although Highlands county meets the density requirement under the bill, there are currently three licensed hospitals in Highlands county and none are designated rural hospitals.<sup>28</sup>

\* 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. This bill 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:

Indeterminate.<sup>29</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

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<sup>28</sup> *Supra* note 25.

<sup>29</sup> *Id.*

**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.)

None.

**B. Amendments:**

None.

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

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