

# SENATE AMENDMENT

AMENDMENT NO. \_\_\_\_\_

casto/casto  
May 16, 2014

ADOPTED	TABLED	CARRIED OVER	FAILED	RECONSIDERED

\_\_\_\_\_  
Clerk of the Senate

ADOPTION NO. \_\_\_\_\_

**BILL NO: H. 3983**

(Reference is to Printer's Date 3/20/14-H.)

The Committee on Medical Affairs proposed the following amendment (H-3983-1):

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Article 29

South Carolina Rural County Access to Emergency Health Care

Section 44-7-4110. This article may be cited as the South Carolina Rural County Access to Emergency Health Care Act.

Section 44-7-4120. The purpose of this article is to assist rural counties in having quality emergency health care available to residents to promote health, well being, and quality of life and to assist health care providers in making emergency health services available in rural counties.

Section 44-7-4130. As used in this article:

- (1) ‘Department’ means the South Carolina Department of Health and Environmental Control.
- (2) ‘Freestanding emergency service’ means a facility providing emergency health services as defined in Section 44-7-130(25).

(3) 'Rural County' means a county in South Carolina with a population less than fifty thousand, according to the most recent projections of the South Carolina Budget and Control Board, Office of Research and Statistics, at the time a hospital submits an application for a freestanding emergency facility.

Section 44-7-4140. A freestanding emergency service must meet the licensure requirements in accordance with Section 44-7-130(25) and Regulation 61-16, Section 613 including, but not limited to, the requirement to provide physician coverage twenty-four hours a day and seven days a week.

Section 44-7-4150. Notwithstanding any provision in the State Certificate of Need and Health Facility Licensure Act, Article 3, Chapter 7, Title 44, a facility may open and operate a freestanding emergency service at a location in a rural county where a hospital has closed and relinquished its license to operate within three years from the date of closure without having to obtain a Certificate of Need.

Section 44-7-4160. (A) The county under which the freestanding emergency service will provide services shall issue a request for proposal or other solicitation, setting forth the terms and provisions for a hospital to reopen as a freestanding emergency service pursuant to this article; provided, however, the Department of Health and Environmental Control shall review and approve the request for proposal or other solicitation before the governing authority may issue it.

(B) A hospital applying to operate a freestanding emergency service shall submit an application and response to the county's request for proposal or other solicitation.

(C) Upon selection of a hospital to operate a freestanding emergency service, the county shall submit a reopening plan to the department no sooner than thirty days before the time the board desires to reopen the closed hospital as a freestanding emergency service. The department shall inspect the freestanding emergency service on a priority basis.

(D) To the extent that a portion of the hospital facility identified in the reopening plan is not in compliance with life safety standards at its designated reopen time, the department shall specify a time within which the violations must be corrected."

SECTION 2. Section 44-7-160 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"Section 44-7-160. A person or health care facility as defined in this article is required to obtain a Certificate of Need from the department before undertaking any of the following:

- (1) the construction or other establishment of a new health care facility;
- (2) a change in the existing bed complement of a health care facility through the addition of one or more beds or change in the classification of licensure of one or more beds;
- (3) an expenditure by or on behalf of a health care facility in excess of five million dollars (\$5,000,000) ~~an amount to be prescribed by regulation~~ which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure and which is associated with patient care activities or an increase in square footage of greater than ten percent, except those expenditures in Section 44-7-170 that are exempt or to which this article does not apply ~~exempted in Section 44-7-170(B)(1)~~. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;
- (4) a capital expenditure by or on behalf of a health care facility which is associated with the addition or substantial expansion of a health service for which specific standards or criteria are prescribed in the South Carolina Health Plan;
- (5) the offering of a health service by or on behalf of a health care facility which has not been offered by the facility in the preceding twelve months and for which specific standards or criteria are prescribed in the South Carolina Health Plan;
- (6) the acquisition of medical equipment which is to be used for diagnosis or treatment if the total project cost is in excess of that prescribed by regulation.

SECTION 3. Section 44-7-170(A) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"Section 44-7-170(A) The following are exempt from Certificate of Need review:

- (1) the acquisition by a person of medical equipment to be used solely for research, the offering of an institutional health service by a person solely for research, or the obligation of a capital expenditure by a person to be made solely for research if it does not:
  - (a) affect the charges imposed by the person for the provision of medical or other patient care services other than the services that are included in the research;
  - (b) change the bed capacity of a health care facility; or

(c) substantially change the medical or other patient care services provided by the person.

A written description of the proposed research project must be submitted to the department in order for the department to determine if these conditions are met. A Certificate of Need is required in order to continue use of the equipment or service after the equipment or service is no longer being used solely for research;

(2) the offices of a licensed private practitioner whether for individual or group practice except as provided for in Section 44-7-160(1) and (6);

(3) the replacement of like equipment for which a Certificate of Need has been issued which does not constitute a material change in service or a new service; and

(4) temporary change in existing bed complement of a general hospital through the conversion of one or more beds to exclusively mental health services use, including psychiatric and substance abuse services, if:

(a) the temporary change in bed complement is for crisis stabilization purposes only. For the purposes of this section, crisis stabilization means the provision of short-term emergency stabilization of psychiatric and/or substance abuse patients in the local community by use of local hospital beds outside of the emergency department for those patients who do not require a hospital level of care;

(b) the changed bed complement remains no longer than thirty days;

(c) the quantity of converted beds is up to ten beds; and

(d) the hospital proposing the change in existing bed complement provides documentation to the department, in the form of an affidavit from the hospital's chief executive director or administrator, that the hospital had a minimum of three hundred hours per month of holding patients in need of admission for psychiatric services in its emergency department for any three months within the preceding twelve month period.

(5) Freestanding psychiatric facilities that operate an acute census of eighty percent or greater over a three month period of time can make a one-time increase of their bed capacity of up to ten beds without a Certificate of Need. Notification would be made in the form of an affidavit from the hospital's chief executive director or administrator that the hospital's occupancy was eighty percent or higher for three months within the preceding twelve month period."

SECTION 4. Section 44-7-220 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"Section 44-7-220. (A) A party who is aggrieved by the Administrative Law Court's final decision may seek judicial review of the final decision in accordance with Section 1-23-380.

(B) If a party does not prevail in an appeal to the Court of Appeals when requesting the reversal of the Administrative Law Court's decision to approve a Certificate of Need application or an exemption under Section 44-7-170 or a determination that Section 44-7-160 is not applicable, the Court of Appeals shall award the party whose project is the subject of the contested case reasonable attorney's fees and costs incurred in the appeal.

(C) If the relief requested in ~~the~~ an appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application or approve the request for exemption under Section 44-7-170 or approve the determination that Section 44-7-160 is not applicable, the party filing the appeal shall deposit a bond with the Clerk of the Court of Appeals within five calendar days after filing the petition to appeal. The bond must be secured by cash or a surety authorized to do business in this State in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars. If the Court of Appeals affirms the Administrative Law Court's decision or dismisses the appeal, the Court of Appeals shall award ~~to~~ the party whose project is the subject of the appeal all of the bond ~~and also may award reasonable attorney's fees and costs incurred in the appeal.~~ If a party appeals the denial of its own Certificate of Need application or of an exemption request under Section 44-7-170 or appeals the determination that Section 44-7-160 is applicable and there is no competing application involved in the appeal, the party filing the appeal is not required to deposit a bond with the Court of Appeals.

~~(C)(D)~~(1) ~~Furthermore, if~~ If at the conclusion of the contested case or judicial review the Administrative Law Court or the Court of Appeals finds that the contested case or a subsequent appeal was frivolous, the Administrative Law Court or the Court of Appeals ~~may~~ shall award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the contested case or judicial review.

(2) As used in this subsection, "frivolous appeal" means a reasonable person in the same circumstances would believe that ~~any one of the following:~~

(a) under the fact the contested case or subsequent appeal was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; ~~taken solely for purposes of delay or harassment;~~

(b) the procurement, initiation, or continuation of the contested case or subsequent appeal was intended merely to harass or injure the other party; or where no question of law is involved;

(c) the contested case or subsequent appeal was not reasonably founded in fact or was interposed merely for delay or was merely brought for a purpose other than securing proper discovery or adjudication of the claim upon which the proceedings are based. where the contested case or judicial review is without merit.

This subsection must not be construed to prohibit any party from seeking sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act pursuant to Section 15-36-10. et seq.

(E) The court must not assess attorney's fees or costs against the department or awarded to the department in any contested case or appeal involving a Certificate of Need application or an exemption request under Section 44-7-170 or a request for a determination as to the applicability of Section 44-7-160."

SECTION 5. Any person or health care facility that undertook any of the projects listed in Section 44-7-160 or in 44-7-170 of the Certification of Need and Health Facility Licensure Act between June 28, 2013 and June 30, 2014, shall not be required to obtain a Certificate of Need, exemption, or non-applicability determination from the Department for the project. Any person, private or public organization, political subdivision, or other governmental agencies that undertook the establishment of a new home health agency or the expansion of an existing home health agency pursuant to the Licensure of Home Health Agencies Act between June 28, 2013, and June 30, 2014, shall not be required to obtain a Certificate of Need from the Department for such establishment or expansion. This provision does not apply if a contested case has been requested or an appeal is in process concerning the purchase of the same type of equipment or project if the equipment or project is to be located in the same service area as defined in the State Health Plan as long as such appeal or contested case was initiated prior to June 28, 2013.

SECTION 6. Notwithstanding the provisions of the Certification of Need and Health Facility Licensure Act ("Act"), any person or health care facility that undertook or had a need to undertake a project between June 28, 2013, and June 30, 2014, which would have required a Certificate of Need shall be awarded a Certificate of Need by the Department within thirty (30) days of submission to the Department of a statement that the project is or was needed, unless an opposition to the project is timely filed by an affected person. Any person or healthcare facility seeking a Certificate of Need pursuant

to this provision must submit a statement to the Department by 5:00 p.m. on June 30, 2014, with a brief description of the project and a brief statement of the need. The Department shall post the statements on the Department's website on the date of receipt. Unless an affected person submits a written opposition to the project to the Department within thirty days of the date of notice, the Department shall automatically award the Certificate of Need. If opposition to the noticed project is received by the Department prior to expiration of the thirty-day period, then the person or health care facility must seek Certificate of Need review pursuant to the provisions of the Act.

SECTION 7. The Department shall give notice to applicants and affected persons of applications, appeals, and proposed changes to the State Health Plan on the Department website and shall not publish in the State Register. The notice shall include a description of the scope and nature of the project and the estimated capital cost.

SECTION 8. Notwithstanding the provisions and procedures of Chapter 23, Title 1, concerning State Agency Rulemaking and Adjudication of Contested Cases, Regulation 61-15 Sections 201, 202, 301, 302, 303, 305, 501, 504, 607, 801, and 802 are repealed.

SECTION 9. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 10. This act takes effect upon approval by the Governor.

/

Renumber sections to conform.  
Amend title to conform.