

South Carolina General Assembly  
120th Session, 2013-2014

~~Indicates Matter Stricken~~

Indicates New Matter

A BILL

TO AMEND SECTION 44-7-130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE STATE CERTIFICATE OF NEED AND HEALTH FACILITY LICENSURE ACT, SO AS TO REMOVE "AMBULATORY SURGICAL FACILITIES" AND "HOSPICE FACILITIES" FROM THE DEFINITION OF "HEALTH CARE FACILITY" AND ADD THE DEFINITION FOR "NEW AND EMERGING TECHNOLOGY"; TO AMEND SECTION 44-7-160, AS AMENDED, RELATING TO CIRCUMSTANCES AND ACTIVITIES REQUIRING A CERTIFICATE OF NEED (CON), SO AS TO FURTHER SPECIFY HEALTH CARE FACILITY EXPENDITURES REQUIRING A CON AND TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 44-7-170, AS AMENDED, RELATING TO INSTITUTIONS AND TRANSACTIONS EXEMPT FROM CON, SO AS TO ADD ADDITIONAL PROGRAMS AND ACTIVITIES WHICH ARE EXEMPT FROM CON AND REMOVE DEPARTMENT DETERMINATION OF EXEMPTIONS; TO AMEND SECTION 44-7-210, AS AMENDED, RELATING TO CON REVIEW AND DECISION, SO AS TO REQUIRE A BOND TO INSTITUTE A CONTESTED CASE IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 44-7-220, AS AMENDED, RELATING TO THE APPELLATE REVIEW OF CERTIFICATE OF NEED DECISIONS, SO AS TO PROVIDE FOR ATTORNEY FEES AND COSTS IN CERTAIN CIRCUMSTANCES, TO REQUIRE A BOND TO INSTITUTE AN APPEAL OF CONTESTED CASE DECISIONS IN CERTAIN CIRCUMSTANCES, AND TO DEFINE "FRIVOLOUS APPEAL"; TO AMEND TITLE 44, CHAPTER 7 SO AS TO INCLUDE NEW ARTICLE 29, RELATING TO RURAL COUNTY ACCESS TO EMERGENCY HEALTH CARE; TO REPEAL SECTION 44-69-75, AS AMENDED; TO AMEND SECTION 13-7-10, RELATING TO THE DEFINITION OF TERMS USED IN THE ATOMIC

**Comment [ab1]:** Exempt ambulatory surgery and hospice from CON

**Comment [ab2]:** Exempt ambulatory surgery, hospice, open heart surgery, diagnostic cath, therapeutic cath, home health, conversion of in-patient beds for mental health needs, and conversion of rural hospital to stand alone emergency facility from CON; do away with requirement for written exemption determination (to reduce litigation)

**Comment [ab3]:** Require a bond for twice the project cost, with a minimum requirement of \$1 million and maximum cap of \$20 million

**Comment [ab4]:** Require a bond for twice the project cost, with a minimum requirement of \$1 million and maximum cap of \$20 million

**Comment [ab5]:** Exempt conversion of rural hospital to stand alone emergency facility

1 ENERGY AND RADIATION CONTROL ACT, SO AS TO  
2 REVISE THE DEFINITION OF "NONIONIZING  
3 RADIATION"; TO AMEND SECTION 13-7-45, AS AMENDED,  
4 RELATING TO THE COLLECTION OF FEES FOR  
5 LICENSING, REGISTRATION AND CERTIFICATION OF  
6 USERS OF THE SOURCES OF IONIZING RADIATION AND  
7 THE USE OF THESE FEES, SO AS TO PROVIDE THAT  
8 ACCREDITATION OR CERTIFICATION IS A  
9 REQUIREMENT OF APPLICATION AND REGISTRATION  
10 OF MAGNETIC RESONANCE IMAGING EQUIPMENT AND  
11 COMPUTED TOMOGRAPHY EQUIPMENT AND THAT THE  
12 DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
13 CONTROL SHALL DETERMINE THE ACCREDITATION OR  
14 CERTIFICATION AGENCIES AND TO PROVIDE THAT THE  
15 DEPARTMENT SHALL ESTABLISH REGISTRATION FEES  
16 FOR RADIOFREQUENCY RADIATION WITHIN MAGNETIC  
17 RESONANCE IMAGING DEVICES USED TO OBTAIN  
18 HUMAN BODY IMAGES.

19  
20 Be it enacted by the General Assembly of the State of South  
21 Carolina:

22  
23 SECTION 1. Section 44-7-130(10) of the 1976 Code is amended  
24 to read:

25  
26 "(10) 'Health care facility' means acute care hospitals,  
27 psychiatric hospitals, alcohol and substance abuse hospitals,  
28 nursing homes, ambulatory surgical facilities, hospice facilities,  
29 radiation therapy facilities, rehabilitation facilities, residential  
30 treatment facilities for children and adolescents, intermediate care  
31 facilities for persons with intellectual disability, narcotic treatment  
32 programs, and any other facility for which Certificate of Need  
33 review is required by federal law."

34  
35 SECTION 2. Section 44-7-130 of the 1976 Code, as last  
36 amended by Act 61 of 2011, is further amended by adding an  
37 appropriately numbered item at the end to read:

38  
39 "( ) 'New and emerging technology' or 'NET' means  
40 equipment, used for diagnosis or treatment, not yet having received  
41 approval by the Food and Drug Administration as of the adoption  
42 of the South Carolina Health Plan in effect at the time."

**Comment [ab6]:** Remove ambulatory surgical facilities and hospice facilities from definition of "health care facility" (44-7-160 requires CON for establishment or construction of "health care facility" as defined here)



1 SECTION ~~2~~ 3. Section 44-7-160 of the 1976 Code, as last  
2 amended by Act 278 of 2010, is further amended to read:

3

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

7 (1) the construction or other establishment of a new health care  
8 facility;

9 (2) a change in the existing bed complement of a health care  
10 facility through the addition of one or more beds or change in the  
11 classification of licensure of one or more beds;

12 (3) ~~an expenditure by or on behalf of a health care facility (i) in~~  
13 ~~excess of an amount to be prescribed by regulation five million~~  
14 ~~dollars (\$5,000,000) which, under generally acceptable accounting~~  
15 ~~principles consistently applied, is considered a capital expenditure;~~  
16 ~~and (ii) which is associated with patient care activities or an~~  
17 ~~increase in square footage of greater than ten percent, except those~~  
18 ~~expenditures exempted in Section 44-7-170. exempted in Section~~  
19 ~~44-7-170(B)(1) in Section 44-7-170 that are exempt or to which~~  
20 ~~this article does not apply.~~ The cost of any studies, surveys,  
21 designs, plans, working drawings, specifications, and other  
22 activities essential to the development, acquisition, improvement,  
23 expansion, or replacement of any plant or equipment must be  
24 included in determining if the expenditure exceeds the prescribed  
25 amount;

26 (4) a capital expenditure by or on behalf of a health care  
27 facility which is associated with the addition or substantial  
28 expansion of a health service for which specific standards or  
29 criteria are prescribed in the South Carolina Health Plan;

30 (5) the offering of a health service by or on behalf of a health  
31 care facility which has not been offered by the facility in the  
32 preceding twelve months and for which specific standards or  
33 criteria are prescribed in the South Carolina Health Plan;

34 (6) the acquisition of ~~medical equipment which is to be new~~  
35 ~~and emerging technology~~ used for diagnosis or treatment if the  
36 total project cost is in excess of ~~that prescribed by one and a half~~  
37 ~~million dollars (\$1,500,000).~~ The Department shall adjust the  
38 threshold of one and a half million dollars annually on July 1, or if  
39 July 1 is a Saturday, Sunday or holiday, the next non-holiday  
40 business day following July 1, based upon the Medical Care  
41 Consumer Price Index, and shall publish notice of the adjusted  
42 amount in the next-following edition of the State Register. The

**Comment [ab7]:** Incorporate proposed regulatory changes into this bill. Increase capital expenditure threshold to \$5 million, and limit it to expenditures associated with patient care activities or an increase in square footage of greater than 10%.

1 adjusted amount shall become effective as of the date of  
2 publication in the State Register."

**Comment [ab8]:** Incorporate proposed regulatory changes into this bill: Increase monetary threshold for equipment (new and emerging technology) to \$1.5 million.

3  
4 SECTION 4. Section 44-7-170 of the 1976 Code, as last amended  
5 by Act 278 of 2010, is further amended to read:

6  
7 "Section 44-7-170. Institutions and transactions exempt from  
8 this article Certificate of Need."

**Comment [ab9]:** These items will be exempt from CON provisions of this article only. This will not impact the licensing provisions of this article, to the extent any of the items listed require a license.

9  
10 (A) The Notwithstanding Section 44-7-160, the following are  
11 exempt from Certificate of Need review; and require no  
12 determination of exemption by the Department:

**Comment [ab10]:** Remove requirement for written determination of exemption from the Department. If a written determination of exemption is required from the Department, that written determination can be appealed. Goal is to have these items be exempt as a matter of law, not subject to litigation.

13 (1) the acquisition by a person of medical equipment to be  
14 used solely for research, the offering of an institutional health  
15 service by a person solely for research, or the obligation of a  
16 capital expenditure by a person to be made solely for research if it  
17 does not:

18 (a) affect the charges imposed by the person for the  
19 provision of medical or other patient care services other than the  
20 services that are included in the research;

21 (b) change the bed capacity of a health care facility; or

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

24 A written description of the proposed research project must be  
25 submitted to the department in order for the department to  
26 determine if these conditions are met. The provisions of Section  
27 44-7-160 shall apply. A Certificate of Need is required in order to  
28 any continued use of the equipment or service after the equipment  
29 or service is no longer being used solely for research;

**Comment [ab11]:** Remove requirement for Department to determine if conditions are met for this exemption, so as to remove it from potential litigation.

30 (2) the offices of a licensed private practitioner whether for  
31 individual or group practice except as provided for in Section 44-  
32 7-160(1) and (6);

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

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

40 (a) the temporary change in bed complement is for crisis  
41 stabilization purposes only. For purposes of this section, crisis  
42 stabilization means the provision of short-term emergency  
43 stabilization of psychiatric and/or substance abuse patients in the



1 local community by use of local hospital beds outside of the  
2 emergency department for those patients who do not require a  
3 hospital level of care;

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

6 (c) the quantity of converted beds is no more than ten  
7 percent of the hospital's total existing beds; and

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

15  
16 (B) This article does not apply to:

17 (+5) an expenditure by or on behalf of a health care facility  
18 for nonmedical projects for services such as refinancing existing  
19 debt, parking garages, laundries, roof replacements, computer  
20 systems, telephone systems, heating and air conditioning systems,  
21 upgrading facilities which do not involve additional square feet or  
22 additional health services, replacement of like equipment with  
23 similar capabilities, or similar projects as described in regulations;

24 (26) facilities owned and operated by the South Carolina  
25 Department of Mental Health and the South Carolina Department  
26 of Disabilities and Special Needs, except an addition of one or  
27 more beds to the total number of beds of the departments' health  
28 care facilities existing on July 1, 1988;

29 (37) educational and penal institutions maintaining  
30 infirmaries for the exclusive use of student bodies and inmate  
31 populations;

32 (48) any federal health care facility sponsored and  
33 operated by this State;

34 (59) community-based housing designed to promote  
35 independent living for persons with mental or physical disabilities.  
36 This does not include a facility defined in this article as a "health  
37 care facility";

38 (610) kidney disease treatment centers including, but not  
39 limited to, free standing hemodialysis centers and renal dialysis  
40 centers;

41 (711) health care facilities owned and operated by the  
42 federal government;

43 (12) construction, establishment, or expansion of

**Comment [ab12]:** Exempt conversion of in-patient beds for mental health needs (H4260 or S695) limited to 1) crisis stabilization 2) percentage of total beds 3) length of stay. "Mental Health" includes psychiatric and substance abuse.

**Comment [ab13]:** The above exemption is similar to language of H 4260 but makes the conversion temporary, good for only 30 days.

For comparison, H 4260 reads:

"(4) a change in the existing bed complement of a general hospital through the addition of one or more beds to be used exclusively for mental health services or a change in the classification of licensure of one or more general hospital beds to beds to be used exclusively for mental health services, provided that the hospital proposing the change in existing bed complement or classification provides documentation to the department in the form of an affidavit from the hospital's chief executive officer or administrator, that the hospital had a minimum of one hundred hours per month of holding patients in need of admission for mental health services in its emergency department for any three months within the preceding twelve-month period."

**Comment [ab14]:** Do away with distinction between items that are "exempt" and items to which CON "does not apply." CON Regulation currently says if there is a question as to the applicability of CON, a written determination of non-applicability is required from the Department. This change in statute will trump the reg and do away with non-applicability determinations; as noted above, exemptions will not require determination from the Department. Exemption determinations and non-applicability determinations are subject to a lot of litigation now; doing away with requirement for written determination will reduce amount of litigation.



1 ambulatory surgical facilities;  
2 (13) open heart surgery programs;  
3 (14) diagnostic cardiac catheterization programs;  
4 (15) therapeutic cardiac catheterization programs;  
5 (16) hospice programs;  
6 (17) home health agencies;  
7 (18) rural emergency facilities established pursuant to  
8 Section 44-7-4150;"

9  
10 ~~(C) Before undertaking a project enumerated in subsection~~  
11 ~~(A), a person shall obtain a written exemption from the department~~  
12 ~~as may be more fully described in regulation."~~

13  
14 SECTION 5. Section 44-7-210 of the 1976 Code, as last amended  
15 by Act 278 of 2010, is further amended by adding the following  
16 item at the end to read:

17  
18 "(E) A party filing a contested case arising from the  
19 Department's decision to grant a Certificate of Need application  
20 shall deposit a bond with the Clerk of the Administrative Law  
21 Court within five calendar days of filing. The bond must be  
22 secured by cash or a surety authorized to do business in this State  
23 in an amount equal to at least two times the total cost of the project  
24 or one million dollars, whichever is greater, but no more than  
25 twenty million dollars. If the Administrative Law Court affirms  
26 the Department's decision or dismisses the case, the Administrative  
27 Law Court shall award the party whose project is the subject of the  
28 contested case reasonable attorney's fees and costs incurred in  
29 defending the Department's decision and non-litigation costs  
30 incurred as a result of the case and the delay associated therewith.  
31 The fees and costs shall be applied to the non-prevailing party's  
32 bond with any remainder returned thereto upon exhaustion of all  
33 appeals. In the event there is more than one non-prevailing party  
34 who has posted a bond pursuant to this section, the Administrative  
35 Law Court shall determine how to apply the awarded fees and  
36 costs against the bonds. Should the Administrative Law Court's  
37 decision be appealed, the Administrative Law Court shall hold the  
38 bond(s) pending resolution of the appeal.

39  
40 SECTION 6. Section 44-7-220 of the 1976 Code, as last  
41 amended by Act 278 of 2010, is further amended to read:  
42

**Comment [ab15]:** Exempt ambulatory surgery facilities from CON

**Comment [ab16]:** Exempt open heart surgery from CON

**Comment [ab17]:** Exempt diagnostic cardiac catheterization programs from CON

**Comment [ab18]:** Exempt cardiac catheterization programs from CON. No distinction made between cardiac cath programs with open heart surgery capability and those without; current State Health Plan allows option for both, so this will exempt both.

**Comment [ab19]:** Exempt hospice from CON (State Health Plan says only inpatient hospice currently requires CON; this will exempt both inpatient and outpatient hospice from CON).

**Comment [ab20]:** Exempt conversion of rural hospital to freestanding emergency room, see section 7 of this Act for proposed statutory amendment addressing this type facility.

**Comment [ab21]:** Exempt home health from CON. See also Sections 8 and 9 of this Act: the home health act currently requires CON for home health, Sections 8 and 9 remove the CON requirement from the home health act too.

**Comment [ab22]:** Remove requirement for written exemption determination from the department. Such determinations are appealable. Goal is that these items will be exempt as a matter of law, and will not be the subject of litigation.

**Comment [ab23]:** Require bond at the ALC for twice the total project cost, with a minimum of \$1 million and a maximum of \$20 million. Bond applies to any party challenging another party's grant of a CON. Attorneys fees and costs in litigation, and non-litigation costs due to the delay caused by the case, will be applied against the bond, with the remainder returned to the party who posted the bond if they lose the case, subject to further appeals.



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

4 ~~(B)(1) If a party does not prevail in a contested case at the~~  
5 ~~Administrative Law Court when requesting the reversal of the~~  
6 ~~department’s decision to approve a Certificate of Need application~~  
7 ~~or an exemption under Section 44-7-170 or a determination that~~  
8 ~~Section 44-7-160 is not applicable, the Administrative Law Court~~  
9 ~~shall award the party whose project is the subject of the appeal~~  
10 ~~reasonable attorney’s fees and costs incurred in the contested case.~~

11 ~~— (2) If a party does not prevail in an appeal to the Court of~~  
12 ~~Appeals when requesting the reversal of the Administrative Law~~  
13 ~~Court’s decision to approve a Certificate of Need application or an~~  
14 ~~exemption under Section 44-7-170 or a determination that Section~~  
15 ~~44-7-160 is not applicable, the Court of Appeals shall award the~~  
16 ~~party whose project is the subject of the contested case reasonable~~  
17 ~~attorney’s fees and costs incurred in the appeal.~~

18 ~~(C)(B) If the relief requested in the an appeal is the reversal of the~~  
19 ~~Administrative Law Court’s decision to approve the a Certificate~~  
20 ~~of Need application or approve the request for exemption under~~  
21 ~~Section 44-7-170 or approve the determination that Section 44-7-~~  
22 ~~160 is not applicable, and the party filing the appeal did not deposit~~  
23 ~~a bond with the Clerk of the Administrative Law Court under~~  
24 ~~Section 44-7-210(E), then the party filing the appeal shall deposit a~~  
25 ~~bond with the Clerk of the Court of Appeals within five calendar~~  
26 ~~days after filing the petition to appeal. The bond must be secured~~  
27 ~~by cash or a surety authorized to do business in this State in an~~  
28 ~~amount equal to at least two times five percent of the total cost of~~  
29 ~~the approved project that is the subject of the appeal or one~~  
30 ~~hundred thousand million dollars, whichever is greater, up to a~~  
31 ~~maximum of one million five hundred thousand but no more than~~  
32 ~~twenty million dollars. If the Court of Appeals affirms the~~  
33 ~~Administrative Law Court’s decision or dismisses the appeal, the~~  
34 ~~Court of Appeals shall award to the party whose project is the~~  
35 ~~subject of the appeal all of the bond and also may award~~  
36 ~~reasonable attorney’s fees and costs incurred in the appeal. If a~~  
37 ~~party appeals the denial of its own Certificate of Need application~~  
38 ~~or of an exemption request under Section 44-7-170 or appeals the~~  
39 ~~determination that Section 44-7-160 is applicable and there is no~~  
40 ~~competing application involved in the appeal, the party filing the~~  
41 ~~appeal is not required to deposit a bond with the Court of Appeals.~~

42 (C) If the relief requested in an appeal to the Court of Appeals  
43 is the reversal of the Administrative Law Court’s decision to

**Comment [ab24]:** The above change about the bond at the ALC incorporates this requirement for an award of attorney fees and costs incurred in the contested case.

**Comment [ab25]:** This requirement for an award of attorney fees and costs incurred in the appeal is incorporated in the change below.

**Comment [ab26]:** Remove reference to exemption and non-applicability determinations; see notes on Section 44-7-170 above. Goal is to do away with litigation over items exempt from CON.

**Comment [ab27]:** This bond requirement will apply in the event of competing applications where the ALC reverses the Department’s decision, and the losing party appeals. The losing party in that situation did not post bond at the ALC, but by appealing to the Court of Appeals they will now be holding up the other side, who won at the ALC. Goal is to have bond requirement apply equally to any party challenging another party’s grant of a CON, whether that grant was awarded by DHEC or by the ALC. (If the appealing party already posted a bond at the ALC, though, this will not require posting a second bond to appeal further.)



1 approve a Certificate of Need application, and the Court of  
2 Appeals affirms the Administrative Law Court's decision or  
3 dismisses the case, the Court of Appeals shall award the party  
4 whose approved project is the subject of the appeal reasonable  
5 attorney's fees and costs incurred in defending the Administrative  
6 Law Court's decision and non-litigation costs incurred as a result  
7 of the appeal and the delay associated therewith. The fees and  
8 costs shall be applied to the non-prevailing party's bond with any  
9 remainder returned thereto. In the event there is more than one  
10 non-prevailing party who has posted a bond pursuant to this  
11 section, the Court of Appeals shall determine how to apply the  
12 awarded fees and costs against the bonds. Should the South  
13 Carolina Supreme Court grant a writ of certiorari to review the  
14 Court of Appeals' decision, the Court of Appeals shall hold the  
15 bond(s) pending resolution of the appeal.

16 (D) If the Supreme Court grants a writ of certiorari to review the  
17 Court of Appeals' decision, the Supreme Court shall award to the  
18 prevailing party reasonable attorney's fees and costs and non-  
19 litigation costs incurred as a result of the appeal and the delay  
20 associated therewith, applied to the non-prevailing party's bond  
21 with remainder returned thereto. In the event there is more than  
22 one non-prevailing party who has posted a bond pursuant to this  
23 section, the Supreme Court shall determine how to apply the  
24 awarded fees and costs against the bonds.

25 (E) Under no circumstance shall a requirement to deposit a bond  
26 under this section apply to the Department. No court may assess  
27 attorney's fees or costs against the Department in any contested  
28 case or appeal involving a Certificate of Need application."

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

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

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

**Comment [ab28]:** Instead of awarding entire amount of bond to prevailing party, court will apply award of attorney fees, costs in defending appeal, and costs incurred by delay caused by the appeal, to the bond, and any remainder will be returned to the party that posted the bond. New language above makes it clear bond only applies when challenging someone else's grant of a CON, so no need to specify that it is inapplicable to someone appealing the denial of their own CON application. Award of attorney fees and costs applies to any further appeal to the Supreme Court as well.

**Comment [ab29]:** DHEC does not have to post bond, will not have any award of attorneys fees or costs assessed against it.



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

~~(c) where the contested case or judicial review is without merit 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.~~

~~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.~~

~~(D) 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."~~

SECTION 7. 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) 'Rural emergency facility' means a freestanding, self-contained facility that is converted from a hospital in a rural county as provided by Section 44-7-4150, that provides, with physician coverage, twenty-four hour, seven day per week emergency health services which include life-saving procedures when life is in jeopardy.

(3) 'Hospital' has the same definition as defined in Section 44-7-130(12).

**Comment [ab30]:** Because the changes above make an award of attorney fees and costs incurred in defending the case as well as non-litigation costs associated with the delay caused by the case automatic at each stage (contested case at ALC and any subsequent appeals), the proposed frivolous appeal language is no longer necessary.

**Comment [ab31]:** Exempt conversion of a rural hospital to a stand alone emergency facility. Requires establishment of authority for DHEC to license this new type of facility. Uses H 4260 as a base but makes significant changes to it as indicated in the below comments to this section.

**Comment [ab32]:** Change term to "rural emergency facility" instead of "freestanding emergency facility." Delete reference to the definition of "freestanding emergency service" at 44-7-130(25) and delete reference to "licensed by [DHEC] pursuant to Section 44-7-270."

**Comment [ab33]:** Deletes the phrase "and is the entity submitting an application to a governing body for the operation of a freestanding emergency facility in a rural county" from this definition of hospital.

**Comment [ab34]:** Delete definition of "Rural County." H 3983 has the following definition: (4) '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.



1 Section 44-7-4140. A rural emergency facility must be  
2 licensed by the Department and must comply with standards  
3 promulgated by the Department through regulation. The  
4 Department may charge fees for initial and renewal applications.  
5 A provisional license may be issued pending promulgation of  
6 regulations pursuant to this article.

**Comment [ab35]:** Deletes requirement that this type of facility must meet the licensure requirements set forth in the hospital regulation. Adds requirement that this type facility must be licensed by DHEC (pursuant to this article) and comply with standards promulgated by regulation. Provides for fees for licenses. Provides that DHEC can issue a provisional license for this type facility before regs are promulgated, so that facilities can get set up without waiting on regs to be finalized.

7  
8 Section 44-7-4150. Notwithstanding any provision in the 'State  
9 Certification of Need and Health Facility Licensure Act', set forth  
10 in Article 3 of this chapter, a hospital located in a rural county that  
11 closes and relinquishes its license to operate may, within three  
12 years from the date of closure, apply to the Department for a  
13 license to operate a rural emergency facility at the site of the  
14 closed hospital pursuant to the provisions of this article without  
15 having to obtain a Certificate of Need.

**Comment [ab36]:** Exempts this type facility from CON. Does not include the language in H.3983 about department inspecting facility on a priority basis upon a 30-day notification that they want to open. See above at 44-7-4140, requiring a license and promulgation of a regulation, but also allowing Department to grant a provisional license pending reg promulgation.

16  
17 Section 44-7-4160. The Department is authorized to conduct  
18 inspections and investigations as it deems necessary to ensure  
19 compliance with this article and department regulations. The  
20 Department may charge an inspection fee.

**Comment [ab37]:** Adds inspection authority and authority to charge inspection fee.

21  
22 Section 44-7-4170. The Department may deny, suspend, or  
23 revoke licenses or assess a monetary penalty, or both, against a  
24 person or facility for violating a provision of this article or  
25 department regulations."

**Comment [ab38]:** Adds authority to take enforcement action for violations.

26  
27  
28 SECTION 8. Section 44-69-30 of the 1976 Code, as last amended  
29 by Act 145 of 1995, is further amended to read:

30  
31 "Section 44-69-30. No person, private or public organization,  
32 political subdivision, or other governmental agency shall establish,  
33 conduct, or maintain a home health agency or represent itself as  
34 providing home health services without first obtaining a license  
35 from the Department of Health and Environmental Control. This  
36 license is effective for a twelve-month period following the date of  
37 issue. A license issued under this chapter is not assignable or  
38 transferable and is subject to suspension or revocation at any time  
39 for failure to comply with this act. Subunits of parent home health  
40 agencies must be separately licensed.

41  
42 The department may enter into public and private joint  
43 partnerships or enter into other appropriate cooperative agreements



1 or arrangements or negotiate and effect these partnerships and  
2 agreements to include the sale of the entity and/or the transfer of  
3 licenses held by the department or its subdivisions to other  
4 qualified providers, if appropriate, when doing so would result in  
5 continued high quality patient care, continued provision of services  
6 to indigent patients, assurance of the employment of the  
7 department's home health employees, and provision of home care  
8 services adequate to meet the needs of the State. The department  
9 may facilitate the negotiation, contracting, or transfer of these  
10 activities through licensure and without requirement of a  
11 Certificate of Need as set out in Section 44-69-75 and without  
12 regard to the Procurement Code, Section 11-35-10, et. seq.  
13 However, a sale of the entity is subject to the provisions of the  
14 Procurement Code.

15  
16 At least thirty days before entering any negotiations regarding a  
17 contractual agreement or a public/private partnership concerning  
18 the provision of home health services, the department shall place a  
19 public notice in a newspaper of general circulation for a period of  
20 no less than three consecutive days within the area where the  
21 services will be performed.

22  
23 The department may establish requirements and conditions upon  
24 those entities joined in partnership or receiving transfer of the  
25 home care services; and licensing, ~~and Certificate of Need~~  
26 ~~including, but not limited to, transfer of employees, coverage of~~  
27 ~~indigent patients, and payments or contributions to the department~~  
28 ~~to continue the provision of basic public health services as~~  
29 ~~determined by the department. All agreements must be reviewed~~  
30 ~~and approved by the board of the department. The department may~~  
31 ~~monitor and enforce the contract or partnership provisions and/or~~  
32 ~~conditions of transfer or any other conditions or requirements of~~  
33 ~~agreements entered into pursuant to this section.~~

34  
35 All funds paid to or received by the department pursuant to this  
36 section must be deposited in an account separate and distinct from  
37 the general fund entitled the Public Health Fund (PHF). The funds  
38 deposited in this fund must be used solely by the department to  
39 support basic public health services determined to be necessary by  
40 the department. The appropriation of the funds must be through the  
41 General Appropriations Act.

42  
43 Notwithstanding any of the provisions of this section, the

**Comment [ab39]:** Remove reference to Certificate of Need in this section of the home health act; home health will be exempt from CON now.

1 department may continue to provide public health services in the  
2 clinic, the home, and the community necessary to ensure the  
3 protection and promotion of the public's health."

Comment [ab40]:

5 SECTION 9. Section 44-69-75 of the 1976 Code, as last amended  
6 by Act 381 of 1995, is repealed:

8 "[Section 44-69-75. Repealed.] Certificate of Need; exemption of  
9 home health services providers.

11 (A) A home health agency shall obtain a certificate of need before  
12 licensure. Procedures for applying for a certificate must be in  
13 accordance with the "State Certification of Need and Health  
14 Facility Licensure Act". No certificate is required for home health  
15 agencies providing home health services before July 1, 1980.

17 (B) A continuing care retirement community licensed pursuant to  
18 Title 37, Chapter 11, may provide home health services and is  
19 exempt from subsection (A) if:

21 (1) the continuing care retirement community furnishes or offers to  
22 furnish home health services only to residents who reside in living  
23 units provided by the continuing care retirement community  
24 pursuant to a continuing care contract;

26 (2) the continuing care retirement community maintains a current  
27 license and meets applicable home health agency licensing  
28 standards;

30 (3) residents of the continuing care retirement community may  
31 choose to obtain home health services from other licensed home  
32 health agencies.

34 Staff from other areas of the continuing care retirement community  
35 may deliver the home health services, but at no time may staffing  
36 levels in any area of the continuing care retirement community fall  
37 below minimum licensing standards or impair the services  
38 provided.

40 If the continuing care retirement community includes charges for  
41 home health services in its base contract, it is prohibited from  
42 billing additional fees for those services. Continuing care  
43 retirement communities certified for Medicare or Medicaid, or



1 ~~both, must comply with governmental reimbursement requirements~~  
2 ~~concerning charges for home health services.~~

3  
4 ~~For purposes of this subsection "resident", "living unit", and~~  
5 ~~"continuing care contract" have the same meanings as provided in~~  
6 ~~Section 37-11-20.~~

7  
8 ~~(C) Subsection (B) applies only to multi level continuing care~~  
9 ~~retirement communities which incorporate a skilled nursing~~  
10 ~~facility.~~

11  
12 ~~(D) The continuing care retirement community shall not bill in~~  
13 ~~excess of its costs. These costs will be determined on nonfacility-~~  
14 ~~based Medicare and/or Medicaid standards. "~~

**Comment [ab41]:** This entire section in the home health act relates to the existing CON requirement for home health. Home health will now be exempt from CON, so this section should be repealed.

15  
16 SECTION 4 10. Section 13-7-10(9) of the 1976 Code is  
17 amended to read:

18  
19 “(9) ‘Nonionizing radiation’ for the purpose of this section shall  
20 ~~mean only means~~ ultraviolet radiation used for the purpose of  
21 tanning the human body, ~~and shall include ultraviolet radiation~~  
22 ~~with wavelengths in air between two hundred and four hundred~~  
23 ~~nanometers or radiofrequency radiation within a magnetic~~  
24 ~~resonance imaging device used for the purpose of obtaining images~~  
25 ~~of the human body.”~~

26  
27 SECTION 5 11. Section 13-7-45 of the 1976 Code, as last  
28 amended by Act 355 of 2006, is amended to read:

29  
30 “Section 13-7-45. (A)(1) The South Carolina Department of  
31 Health and Environmental Control shall promulgate regulations  
32 and establish a schedule for the collection of annual fees for the  
33 licensing, registration, and certification of users of the sources of  
34 ionizing radiation. The fees collected must be sufficient, in the  
35 judgment of the department, to protect the public health and safety  
36 and the environment and to recover the costs incurred by the  
37 department in regulating the use of ionizing radiation and in  
38 performing emergency corrective measures intended to protect the  
39 public health and safety or the environment pursuant to the  
40 provisions of law.

41 (2) Accreditation or certification is a requirement of  
42 application and registration of magnetic resonance imaging  
43 equipment and computed tomography equipment. The department

1 shall determine the appropriate accreditation or certification  
2 agencies.

3 (3) The department shall promulgate regulations and  
4 establish a schedule for the collection of an annual fee for the  
5 registration of a source of nonionizing radiation ~~which that~~ is used  
6 in a commercial establishment for the tanning of human skin or  
7 radiofrequency radiation within a magnetic resonance imaging  
8 device used for the purpose of obtaining images of the human  
9 body. The registration fee must be sufficient in the judgment of  
10 the department to protect the public health and safety and the  
11 environment and to recover the costs incurred by the department in  
12 registering the source of nonionizing radiation and in performing  
13 emergency corrective measures intended to protect the public  
14 health and safety or the environment pursuant to ~~the provisions of~~  
15 law.

16 ~~(3)~~(4) The department ~~shall have~~ has no duty to inspect a  
17 source of nonionizing radiation unless it has received credible  
18 information indicating a violation of applicable statutes or  
19 regulations or the existence of a public health emergency. The  
20 department may retain up to ~~thirty~~ fifty thousand dollars from the  
21 fees collected to be used for the administration of this program.

22 (B) In determining the sufficiency of the fees to be charged and  
23 collected, the department shall consider an arrangement existing  
24 between South Carolina and a registrant, a licensee, a certificant,  
25 another state, or a federal agency under which costs incurred by  
26 the department in regulating the use of ionizing and nonionizing  
27 radiation and in performing emergency corrective measures  
28 intended to protect the public health and safety and the  
29 environment are recoverable by this State.

30 (C) A registrant, licensee, or certificant who fails to pay the  
31 fees required by ~~regulation~~ of the department within thirty days  
32 after payment is due also shall pay a penalty of fifty dollars. If  
33 failure to pay the required fees continues for more than sixty days  
34 after payment is due, the registrant, licensee, or certificant must be  
35 notified by the department by certified mail to be sent to his last  
36 known address that his registration, license, or certificate is  
37 revoked and that activities permitted under the authority of the  
38 registration, license, or certificate must end immediately. The  
39 registration, license, or certificate may be reinstated by the  
40 department upon payment of the required fees, the penalty of fifty  
41 dollars, and an additional penalty of one hundred dollars if the  
42 registrant, licensee, or certificant is otherwise in good standing, in



1 the judgment of the department, and presents to the department a  
2 satisfactory explanation for his failure to pay the required fees.”

3  
4 SECTION 12. The certificate of need provisions set forth in the  
5 “State Certification of Need and Health Facility Licensure Act” do  
6 not apply to projects for which one or more of the following were  
7 submitted to the SC Department of Health and Environmental  
8 Control during the time beginning July 1, 2013, and ending  
9 September 30, 2014:

10 (1) application for license to operate an inpatient care facility  
11 (initial license application or application to alter or amend an  
12 existing license);

13 (2) Application for license to operate an outpatient care  
14 activity or service (initial license application or application to alter  
15 or amend an existing license);

16 (3) Construction Project Information Form;

17 (4) Shielding Plan Review Application;

18 (5) Facility Registration Approval Request;

19 (6) Registration of X-Ray Producing Machines;

20  
21 A certificate of need shall not be a prerequisite for licensure for  
22 any health care facility, activity, service, or equipment for which  
23 one or more of the above documents were submitted to the  
24 Department during the time period beginning July 1, 2013, and  
25 ending September 30, 2014. No exemption decision or non-  
26 applicability determination shall be required for any act taken  
27 during the time period beginning July 1, 2013, and ending  
28 September 30, 2014, to which the exemption or non-applicability  
29 provisions of Section 44-7-170 would otherwise apply.

30  
31 **SECTION 6 13.** This act takes effect upon approval by the  
32 Governor.

33 -----XX-----  
34

**Comment [ab42]:** Health licensing applications

**Comment [ab43]:** This will capture construction projects that someone might have begun planning during the period of CON suspension that do not involve the requirement for a license application. The Construction Project Information Form is a document the Division of Health Facilities Construction requires anyone contemplating new construction to submit to the Department in order to initiate the plan submittal, review, and approval process.

**Comment [ab44]:** These are 3 different types of approval required by the Bureau of Radiological Health that might apply to someone who has begun a project involving radiation therapy / equipment during the period of CON suspension.

**Comment [ab45]:** Grandfather (not subject to litigation, etc) all projects otherwise subject to CON statutory site who have applied for a license from July 1, 2013. And – they don’t have to go back and get CON. By choosing September 30, 2014, as an end date to this grandfather provision, we’re building in a grace period for people who may have begun working on their project but haven’t yet filed the appropriate paperwork; such people will be on notice once this act passes that they have a limited amount of time to get that paperwork in to the department in order to be covered by this grandfather provision.