

SENATE AMENDMENT

AMENDMENT NO. _____

casto/casto
January 19, 2016

ADOPTED

TABLED

CARRIED OVER

FAILED

RECONSIDERED

Clerk of the Senate

ADOPTION NO. _____

BILL NO: H. 3250

(Reference is to Printer's Date 6/4/15.)

Senators CLEARY, LOURIE and NICHOLSON proposed the following amendment (not yet finalized):

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

SECTION 1. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44-7-215. Notwithstanding another provision of law, the department shall have access to data maintained by the Revenue and Fiscal Affairs Office relevant to Certificates of Need, specifically including data that will assist the department in determining the need for additional health care facilities, beds, health services and equipment, all by health service area, and whether or to whom to award a Certificate of Need.”

SECTION 2. Section 13-7-10(9) of the 1976 Code, as last amended by Act 552 of 1990, is further amended to read:

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

SECTION 3. Section 13-7-45 of the 1976 Code, as last amended by Act 355 of 2006, is further amended to read:

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

(2) Accreditation or certification is a requirement of application and registration of magnetic resonance imaging equipment and computed tomography equipment. The department shall determine the appropriate accreditation or certification agencies.

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

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

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

(C) A registrant, licensee, or certificant who fails to pay the fees required by ~~regulation of~~ the department within thirty days after payment is due also shall pay a penalty of fifty dollars. If failure to pay the required fees continues for more than

sixty days after payment is due, the registrant, licensee, or certificant must be notified by the department by certified mail to be sent to his last known address that his registration, license, or certificate is revoked and that activities permitted under the authority of the registration, license, or certificate must end immediately. The registration, license, or certificate may be reinstated by the department upon payment of the required fees, the penalty of fifty dollars, and an additional penalty of one hundred dollars if the registrant, licensee, or certificant is otherwise in good standing, in the judgment of the department, and presents to the department a satisfactory explanation for his failure to pay the required fees.

SECTION 4. Section 44-1-60 (E)(2) and (G) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(E)(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person. There is no right to a final review regarding a staff decision on an application or on a request of exemption or nonapplicability determination submitted pursuant to the Certificate of Need program.

(G)(1) Except as otherwise provided in item (2), an applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:

~~(1)(a)~~ notice is mailed to the applicant, permittee, licensee, and affected persons that the board declined to hold a final review conference; or

~~(2)(b)~~ the sixty calendar day deadline to hold the final review conference lapses and no conference has been held; or

~~(3)(c)~~ the final agency decision resulting from the final review conference is received by the parties.

(2) In the case of a Certificate of Need decision, an applicant, a holder of a certificate, and an affected person, within thirty days after receipt of the department staff decision, may file a request with the Administrative Law Court for a contested case hearing. Except in contested cases involving a challenge to a staff decision by a competing applicant, an affected person may not file a request for a contested case pursuant to this section to review a decision on an application unless the person has provided written notice to the department during the staff review process that he is an affected person and specifically states his opposition to the application under review.”

SECTION 5. A. Section 44-7-130(1), (5), (20), and (21) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(1) ‘Affected person’ means the applicant, a person with standing residing within the geographic area served or to be served by the applicant, persons ~~located in the health service area in which the project is to be located and~~ who provide similar services to the proposed project in the health service area in which the project is to be located, persons who before receipt by the department of the proposal being reviewed have formally indicated an intention to provide in the future similar services ~~in the future~~ to the proposed project in the health service area in which the project is to be located, persons who pay for health services in the health service area in which the project is to be located and who have notified the department of their interest in Certificate of Need applications, the State Consumer Advocate, and the State Ombudsman. ~~Persons from another state who would otherwise be considered ‘affected persons’ are not included unless that state provides for similar involvement of persons from South Carolina in its certificate of need process.~~ A person operating a health care facility or providing a health service in a state other than South Carolina who does not: (a) operate a health care facility in the proposed service area which provides similar services; or (b) provide a health service similar to that being sought by the applicant, and who is neither an applicant nor a competing applicant, is not considered an affected person.

(5) ‘Competing applicants’ means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within ~~a time frame as established by departmental regulations~~ thirty days of the publication on the department’s website of the notice of the filing of the first application and whose applications, if approved, would exceed the need for services or facilities.

(20) ‘Freestanding or mobile technology’ means medical equipment owned or operated by a person other than a health care facility ~~for which the total cost is in excess of that prescribed by regulation and for which specific standards or criteria are prescribed in the State Health Plan~~ for which the total cost is determined pursuant to Section 44-7-160(6) and for which specific standards or criteria are prescribed in the State Health Plan.

(21) ‘Like equipment with similar capabilities’ means medical equipment that has substantially similar technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; in which ~~functional and technological capabilities are identical to the equipment to be replaced; and the replacement equipment is to~~

be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service.”

B. Section 44-7-130 of the 1976 Code is amended by adding an appropriately numbered item to read:

“() ‘Similar services’ means services that are comparable to those contemplated in the application and for which there are standards in the State Health Plan.”

SECTION 6. Section 44-7-150(5) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(5) ~~The department may as it determines necessary~~ charge and collect fees to cover the cost of operating the Certificate of Need program, including application fees, filing fees, issuance fees, and nonapplicability/exemption determination fees. The department shall develop regulations which set fees as authorized by this article. The level of these fees must be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services in the Certificate of Need program. All fees and procedures for collecting fees must be adopted pursuant to procedures set forth in the Administrative Procedures Act. Any fee collected pursuant to this section ~~in excess of seven hundred fifty thousand dollars~~ must be retained by the department and designated for the administrative costs of the Certificate of Need program. ~~The first seven hundred fifty thousand dollars collected pursuant to this section must be deposited into the general fund of the State. Until fees are promulgated through regulation, all fees established as of January 1, 2009, remain in effect.~~”

SECTION 7. A. 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 that is not otherwise exempt from review pursuant to Section 44-7-170;
- (3) an expenditure by or on behalf of a health care facility in excess of ~~an amount to be prescribed by regulation~~ five million dollars which, under generally acceptable accounting principles consistently applied, is considered a capital

expenditure, except ~~for~~ those expenditures otherwise exempted in Section 44-7-170(B)(4). 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. The department shall make an annual adjustment to this capital expenditure amount to reflect changes in the Consumer Price Index for All Urban Consumers, Medical Care Services as published by the United States Department of Labor, Bureau of Labor Statistics:

(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 that is not otherwise exempt from review pursuant to Section 44-7-170:

(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~~ unless otherwise exempt pursuant to Section 44-7-170:

(6) the acquisition of ~~medical equipment which is to be~~ freestanding or mobile technology used for diagnosis or treatment if the total project cost is in excess of ~~that prescribed by regulation~~ one million dollars. The department shall make an annual adjustment to this technology expenditure amount to reflect changes in the Consumer Price Index for All Urban Consumers, Medical Care Services as published by the United States Department of Labor, Bureau of Labor Statistics.”

B. This SECTION takes effect upon approval by the Governor, and the expenditure threshold set forth in Section 44-7-160(3) and (6) first applies to Certificate of Need applications submitted thereafter.

SECTION 8. Section 44-7-170(A) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(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 (5);

(3) the replacement of like ~~equipment~~ freestanding or mobile technology with similar capabilities for which a Certificate of Need has been issued which does not constitute a material change in service or a new service;

(4) the addition of one or more beds in the bed capacity of an existing freestanding licensed acute care hospital, nursing home, rehabilitation facility, or psychiatric hospital; provided that this exemption shall not apply to beds in designated rehabilitation or psychiatric units in general hospitals or nursing homes, and provided further that such increase in bed capacity is not exempt from review unless the following conditions are met:

(a) the average occupancy of the total number of similarly licensed beds at the facility site where the beds would be added exceeded seventy-five percent of such capacity, including beds considered as observational status, during the most recent calendar year; and

(b) the number of beds exempt from review under this section may not exceed twenty beds or ten percent of the total number of similarly licensed beds located at the facility where the beds would be added;

(5) a capital expenditure by or on behalf of a health care facility to expand open heart surgery units or diagnostic or comprehensive cardiac catheterization laboratories for which a Certificate of Need previously has been awarded at the same site where such services are located.”

SECTION 9. Section 44-7-180 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44-7-180. (A) ~~There is created a health planning committee comprised of fourteen members. The Governor shall appoint twelve members, which must include at least one member from each congressional district. In addition, each of the following groups must be represented among the Governor’s appointees: health care consumers, health care financiers, including business and insurance, and health care providers, including an administrator of a licensed for-profit~~

~~nursing home. The chairman of the board shall appoint one member. The South Carolina Consumer Advocate or the Consumer Advocate's designee is an ex officio nonvoting member. Members appointed by the Governor are appointed for four year terms, and may serve only two consecutive terms. Members of the health planning committee are allowed the usual mileage and subsistence as provided for members of boards, committees, and commissions. The committee shall elect from among its members a chairman, vice chairman, and such other officers as the committee considers necessary to serve a two year term in that office.~~

~~(B) With the advice of the health planning committee, The department shall prepare, and publish electronically, a South Carolina Health Plan for use in the administration of the Certificate of Need program provided in this article. The plan at a minimum must include:~~

- ~~(1) an inventory of existing health care facilities, beds, specified health services, and equipment;~~
- ~~(2) projections of need for additional health care facilities, beds, health services, and equipment;~~
- ~~(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and~~
- ~~(4) a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service, or equipment.~~

~~The South Carolina Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care cost and accessibility. Nothing in this provision shall be construed as requiring the department to approve any project which is inconsistent with the South Carolina Health Plan.~~

~~(C) Upon approval by the health planning committee, the South Carolina Health Plan must be submitted at least once every two years to the board for final revision and adoption. Once adopted by the board, the plan may later be revised through the same planning and approval process. The department shall adopt by regulation a procedure to allow public review and comment, including regional public hearings, before adoption or revision of the plan.~~

~~(B) The department must review and update the State Health Plan annually, including standards by which need is determined for health services and health care facilities.”~~

SECTION 10. Section 44-7-200 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

~~“Section 44-7-200. (A) An application for a Certificate of Need must be submitted to the department in a form established by regulation~~ utilizing a web-based application available on the department’s website. The application must address all applicable standards and requirements set forth in departmental regulations; and project review criteria of the department; ~~and the South Carolina Health Plan.~~

~~(B) Within twenty days before submission of an application, the applicant shall publish notification that an application is to be submitted to the department in a newspaper serving the area where the project is to be located for three consecutive days. The notification must contain a brief description of the scope and nature of the project. No application may be accepted for filing by the department unless accompanied by proof that publication has been made for three consecutive days within the prior twenty day period and payment of the initial application fee has been received.~~

Within twenty days before submission of an application, the applicant shall file a letter of intent to submit an application with the department utilizing the web-based application. The letter of intent must contain a brief description of the scope and nature of the project. The department must not accept an application for a Certificate of Need unless the application is accompanied by a copy of the letter of intent filed by the applicant with the department within the prior twenty-day period and payment of the initial application fee has been received.

(C) Upon publication of this notice and until a contested case hearing is requested pursuant to Section 44-1-60(G):

(1) ~~members of the board and persons appointed by the board to hold a final review conference on staff decisions~~ may not communicate directly or indirectly with any person in connection with the application; and

(2) no person shall communicate, or cause another to communicate, as to the merits of the application with members of the board ~~and persons appointed by the board to hold a final review conference on staff decisions.~~

A person who violates this subsection is subject to the penalties provided in Section 1-23-360.

(D) After receipt of an application with ~~proof of publication~~ a copy of the letter of intent and payment of the initial application fee, the department shall publish ~~in the State Register~~ on the department’s website a notice that an application has been accepted for filing. Within thirty days of acceptance of the application, the department may request additional information as may be necessary to complete the application. The applicant has thirty days from the date of the request to

submit the additional information. If the applicant fails to submit the requested information within the thirty-day period, the application is considered withdrawn.

(E) After a Certificate of Need application has been filed with the department, state and federal elected officials are prohibited from communicating with the department with regard to the Certificate of Need application at any time. This prohibition does not include written communication of support or opposition to an application. ~~Such~~ Written communication must be included in the administrative record.”

SECTION 11. Section 44-7-210 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44-7-210. (A) After the department has determined that an application is complete, affected persons must be notified in accordance with departmental regulations. The notification to affected persons that the application is complete begins the review period; however, in the case of competing applications, the review period begins on the date of notice to affected persons that the last of the competing applications is complete and notice is published ~~in the State Register~~ on the department’s website. The staff shall issue its decision to approve or deny the application no earlier than thirty calendar days, but no later than one hundred twenty calendar days, from the date affected persons are notified that the application is complete, ~~unless a public hearing is timely requested as may be provided for by department regulation. If a public hearing is properly requested, the staff’s decision must not be made until after the public hearing, but in no event shall the decision be issued more than one hundred fifty calendar days from the date affected persons are notified that the application is complete.~~ The staff may reorder the relative importance of the project review criteria no more than one time during the review period. The staff’s reordering of the relative importance of the project review criteria does not extend the review period provided for in this section. Other than in the review of competing applications, if the department fails to deny or approve an application within one hundred twenty calendar days of the date the application was determined to be complete, the application is deemed to be approved and a Certificate of Need shall be issued within seven business days. The director may grant the staff one thirty-day extension per Certificate of Need application to render a decision. If the department does not act within one hundred twenty calendar days and the application is deemed approved, the department’s administrative record is considered part of any request for contested case and must be furnished to the parties to any contested case and the department staff will be made available to the parties for the purposes of depositions and testimony during any contested case hearing. If an affected person requests a contested case before the Administrative Law Court concerning an application

deemed to have been approved under this section, the failure of the department to act on the application within the applicable review period shall not be used as a basis by the Administrative Law Court to remand the case to the department.

(B) The department may not issue a Certificate of Need unless an application complies with the ~~South Carolina State Health Plan~~; project review criteria; and other regulations. Based on project review criteria and other regulations, which must be identified by the department, the department may refuse to issue a Certificate of Need even if an application complies with the ~~South Carolina State Health Plan~~. In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the ~~State Health Plan~~; project review criteria; and the regulations ~~adopted~~ promulgated by the department.

(C) On the basis of staff review of the application, the staff shall make a staff decision to grant or deny the Certificate of Need and ~~the staff~~ shall issue a decision in accordance with Section 44-1-60(D). Notice of the decision must be sent to the applicant and affected persons who have asked to be notified. The decision ~~becomes~~ is the final agency decision ~~unless a timely written request for a final review is filed with the department as provided for in Section 44-1-60(E).~~

~~However, a person may not file a request for final review in opposition to the staff decision on a Certificate of Need unless the person provided written notice to the department during the staff review that he is an affected person and specifically states his opposition to the application under review.~~

(D) The staff's decision is not the final agency decision until the completion of the final review process provided for in ~~Section 44-1-60(F).~~

~~(E)~~ A contested case hearing of the final agency decision must be requested in accordance with Section 44-1-60(G). The issues considered at the contested case hearing considering a Certificate of Need are limited to those presented or considered during the staff review.

~~(F)~~(E) Notwithstanding any other provision of law, including Section 1-23-650(C) in a contested case arising from the department's decision to grant or deny a Certificate of Need application, to grant or deny a request for exemption under Section 44-7-170, or ~~the issuance of a determination regarding~~ to determine the applicability of Section 44-7-160, ~~the following apply~~ each party:

- (1) ~~each party~~ may name no more than ten witnesses who may testify at the contested case hearing;

(2) ~~each party~~ is permitted to take only the deposition of a person listed as a witness who may testify at the contested case hearing, unless otherwise provided for by the Administrative Law Court agreed to by the parties or ordered by the court. A deposition is limited to seven hours of questioning per party. The court may allow additional time if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination:

(3) ~~each party~~ is permitted to serve only ten interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure;

(4) ~~each party~~ is permitted to serve only ten requests for admission, including subparts; and

(5) for the express purpose of limiting costly and unnecessary discovery regarding electronically stored information, each party is permitted to serve only thirty requests for production, including subparts which requests are limited to data, analyses, reports, projections, and such other information directly related to the criteria set forth in the State Health Plan and to the standards set forth in regulations that are relevant to the application, request or determination being contested. Unless ordered by the administrative law court upon a showing of extraordinary circumstances by the party seeking production, no party shall be required to preserve, search for, or produce electronic communications, in any format or medium, including emails, voicemails, or text messages, except to the extent that such communications contain responsive data, projections, reports or analyses or except to the extent that a party intends to rely upon its own such communications as part of its case before the administrative law court.

The limitations provided for in this subsection are intended to make the contested case process more efficient, less burdensome, and less costly to the parties in Certificate of Need cases. Therefore, the Administrative Law Court may, by court order, lift these limitations beyond the parameters set forth in this subsection only in exceptional circumstances when failure to do so would cause substantial prejudice to the party seeking additional discovery.

(G) Notwithstanding any other provision of law, in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the Administrative Law Court shall file a final decision no later than eighteen months after the contested case is filed with the Clerk of the Administrative Law Court, unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise to extend the deadline."

SECTION 12. 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 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, the denial of~~ an exemption request under Section 44-7-170, ~~or appeals the a~~ determination that the article applies under 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)(1) ~~Furthermore,~~ 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 ~~any one of the following~~ a reasonable person in the same circumstances would believe that:

(a) ~~taken solely for purposes of delay or harassment~~ 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;

(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 awarded against or to the department in any contested case or appeal involving a Certificate of Need application or an exemption request pursuant to Section 44-7-170 or a request for a determination as to the applicability of Section 44-7-160."

SECTION 13. Section 44-7-230(D) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(D) A Certificate of Need is valid for one year from the date of issuance. A Certificate of Need must be issued with a timetable submitted by the applicant and approved by the department to be followed for completion of the project. The holder of the Certificate of Need shall submit periodic progress reports on meeting the timetable as may be required by the department. Failure to meet the timetable results in the revocation of the Certificate of Need by the department unless the department determines that extenuating circumstances beyond the control of the holder of the Certificate of Need are the cause of the delay. The department may grant two extensions of up to nine months each upon evidence that substantial progress has been made in accordance with procedures set forth in regulations. The ~~board~~ department may grant further extensions of up to nine months each only if it determines that substantial progress has been made in accordance with the procedures set forth in regulations."

SECTION 14. Section 44-7-1590(C) of the 1976 Code is amended to read:

"(C) Any interested party, within twenty days after the date of the publication of the notice, ~~but not afterwards,~~ may challenge the action ~~so~~ taken by the state board, or the county board, ~~or the Department of Health and Environmental Control,~~ by action de novo in the court of common pleas in any county where the hospital facilities are to be located."

SECTION 15. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 16. This act takes effect upon approval by the Governor. /

Renumber sections to conform.
Amend title to conform.