

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55229-LN-110 (2/20)

Short Title: Certificate of Need/County Action. (Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW COUNTIES TO BRING AN ACTION IN SUPERIOR COURT
FOR REVIEW OF COMPLIANCE WITH A CERTIFICATE OF NEED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-185 reads as rewritten:

"§ 131E-185. Review process.

(a) Repealed by Session Laws 1987, c. 511, s. 1.

(a1) Except as provided in subsection (c) of this section, there shall be a time limit of 90 days for review of the applications, beginning on the day established by rule as the day on which applications for the particular service in the service area shall begin review.

(1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than 30 days after the date on which the application begins review. These written comments may include:

- a. Facts relating to the service area proposed in the application;
- b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;
- c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

(2) No more than 20 days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate service area if one or more of the following circumstances apply; the review to be conducted is

1 competitive; the proponent proposes to spend five million dollars
2 (\$5,000,000) or more; a written request for a public hearing is received
3 before the end of the written comment period from an affected party as
4 defined in G.S. 131E-188(c); or the agency determines that a hearing is
5 in the public interest. At such public hearing oral arguments may be
6 made regarding the application or applications under review; and this
7 public hearing shall include the following:

- 8 a. An opportunity for the proponent of each application under
9 review to respond to the written comments submitted to the
10 Department about its application;
- 11 b. An opportunity for any person, except one of the proponents, to
12 comment on the applications under review;
- 13 c. An opportunity for a representative of the Department, or such
14 other person or persons who are designated by the Department
15 to conduct the hearing, to question each proponent of
16 applications under review with regard to the contents of the
17 application;

18 The Department shall maintain a recording of any required public
19 hearing on an application until such time as the Department's final
20 decision is issued, or until a final agency decision is issued pursuant to
21 a contested case hearing, whichever is later; and any person may
22 submit a written synopsis or verbatim statement that contains the oral
23 presentation made at the hearing. An applicant shall have 15 days
24 immediately following any required public hearing to modify the
25 application and submit the modified application to the Department.

- 26 (3) The Department may contract or make arrangements with a person or
27 persons located within each service area for the conduct of such public
28 hearings as may be necessary. The Department shall publish, in each
29 service area, notice of the contracts that it executes for the conduct of
30 those hearings.
- 31 (4) Within 15 days from the beginning of the review of an application or
32 applications proposing the same service within the same service area,
33 the Department shall publish notice of the deadline for receipt of
34 written comments, of the time and place scheduled for the public
35 hearing regarding the application or applications under review, and of
36 the name and address of the person or agency that will preside.
- 37 (5) The Department shall maintain all written comments submitted to it
38 during the written comment stage and any written submissions
39 received at the public hearing as part of the Department's file
40 respecting each application or group of applications under review by it.
41 The application, written comments, and public hearing comments,
42 together with all documents that the Department used in arriving at its
43 decision, from whatever source, and any documents that reflect or set
44 out the Department's final analysis of the application or applications

1 under review, shall constitute the Department's record for the
2 application or applications under review.

3 (a2) When an expedited review has been approved by the Department, no public
4 hearing shall be held. The Department may contact the applicant and request additional
5 or clarifying information, amendments to, or substitutions for portions of the
6 application. The Department may negotiate conditions to be imposed on the certificate
7 of need with the applicant.

8 (b) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 137(a).

9 (c) The Department may extend the review period for a period not to exceed 60
10 days and provide notice of such extension to all applicants. For expedited reviews, the
11 Department may extend the review period only if it has requested additional substantive
12 information from the applicant."

13 **SECTION 2.** G.S. 131E-189 reads as rewritten:

14 **"§ 131E-189. Withdrawal of a certificate of need.**

15 (a) The Department shall specify in each certificate of need the time the holder
16 has to make the service or equipment available or to complete the project and the
17 timetable to be followed. The timetable shall be the one proposed by the holder of the
18 certificate of need unless the Department specifies a different timetable in its decision
19 letter. The holder of the certificate shall submit such periodic reports on his progress in
20 meeting the timetable as may be required by the Department. If no progress report is
21 provided or, after reviewing the progress, the Department determines that the holder of
22 the certificate is not meeting the timetable and the holder cannot demonstrate that it is
23 making good faith efforts to meet the timetable, the Department may withdraw the
24 certificate. If the Department determines that the holder of the certificate is making a
25 good faith effort to meet the timetable, the Department may, at the request of the holder,
26 extend the timetable for a specified period.

27 (b) The Department may withdraw any certificate of need, if the holder of the
28 certificate fails to develop the service in a manner consistent with the representations
29 made in the application or with any condition or conditions the Department placed on
30 the certificate of need.

31 (c) The Department may immediately withdraw any certificate of need if the
32 holder of the certificate, before completion of the project or operation of the facility,
33 transfers ownership or control of the facility, the project, or the certificate of need. Any
34 transfer after that time will be subject to the requirement that the service be provided
35 consistent with the representations made in the application and any applicable
36 conditions the Department placed on the certificate of need. Transfers resulting from
37 death or personal illness or other good cause, as determined by the Department, shall
38 not result in withdrawal if the Department receives prior written notice of the transfer
39 and finds good cause. Transfers resulting from death shall not result in withdrawal.

40 (d) In the event that the Department fails to review the progress of the project or
41 facility which a certificate of need has been issued, or fails to withdraw a certificate of
42 need as authorized under this section, the board of county commissioners of the county
43 in which the facility or project is located or proposed to be located, may bring an action
44 in superior court against the certificate holder for determination of the holder's

1 compliance or good faith effort to comply with the timetable set forth in the certificate.
2 If the court determines that the holder has not complied or has not made a good faith
3 effort to comply with the timetable or other conditions placed on the certificate, the
4 court shall order the Department to withdraw the certificate. The holder of the certificate
5 may appeal the decision of the court in accordance with G.S. 131E-188."

6 **SECTION 3.** This act is effective when it becomes law.