

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 10  
Judiciary I Committee Substitute Adopted 2/2/93

Short Title: CON Modifications.

(Public)

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Sponsors:

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Referred to: Calendar 2/3/93.

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January 28, 1993

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE CERTIFICATE OF NEED LAW.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 131E-175 reads as rewritten:

5 "**§ 131E-175. Findings of fact.**

6 The General Assembly of North Carolina makes the following findings:

7 (1) That the financing of health care, particularly the reimbursement of  
8 health services rendered by health service facilities, limits the effect of  
9 free market competition and government regulation is therefore  
10 necessary to control costs, utilization, and distribution of new health  
11 service facilities and the bed complements of these health service  
12 facilities.

13 (2) That the increasing cost of health care services offered through health  
14 service facilities threatens the health and welfare of the citizens of this  
15 State in that citizens need assurance of economical and readily  
16 available health care.

17 (3) That, if left to the market place to allocate health service facilities and  
18 health care services, geographical maldistribution of these facilities  
19 and services would occur and, further, less than equal access to all  
20 population groups, especially those that have traditionally been  
21 medically underserved, would result.

22 (3a) That access to health care services and health care facilities is critical  
23 to the welfare of rural North Carolinians, and to the continued viability

1 of rural communities, and that the needs of rural North Carolinians  
2 should be considered in the certificate of need review process.

- 3 (4) That the proliferation of unnecessary health service facilities results in  
4 costly duplication and underuse of facilities, with the availability of  
5 excess capacity leading to unnecessary use of expensive resources and  
6 overutilization of health care services.
- 7 (5) Repealed by Session Laws 1987, c. 511, s. 1.
- 8 (6) That excess capacity of health service facilities places an enormous  
9 economic burden on the public who pay for the construction and  
10 operation of these facilities as patients, health insurance subscribers,  
11 health plan contributors, and taxpayers.
- 12 (7) That the general welfare and protection of lives, health, and property  
13 of the people of this State require that new institutional health services  
14 to be offered within this State be subject to review and evaluation as to  
15 need, cost of service, accessibility to services, quality of care,  
16 feasibility, and other criteria as determined by provisions of this  
17 Article or by the North Carolina Department of Human Resources  
18 pursuant to provisions of this Article prior to such services being  
19 offered or developed in order that only appropriate and needed  
20 institutional health services are made available in the area to be  
21 served."

22 Sec. 2. G.S. 131E-176 reads as rewritten:

23 **"§ 131E-176. Definitions.**

24 As used in this Article, unless the context clearly requires otherwise, the following  
25 terms have the meanings specified:

- 26 (1) 'Ambulatory surgical facility' means a facility designed for the  
27 provision of ~~an~~a specialty ambulatory surgical program or a  
28 multispecialty ambulatory surgical program. An ambulatory surgical  
29 facility serves patients who require local, regional or general  
30 anesthesia and a period of post-operative observation. An ambulatory  
31 surgical facility may only admit patients for a period of less than 24  
32 hours and must provide at least ~~one~~two designated operating ~~room~~  
33 rooms and at least one designated recovery room, have available the  
34 necessary equipment and trained personnel to handle emergencies,  
35 provide adequate quality assurance and assessment by an evaluation  
36 and review committee, and maintain adequate medical records for each  
37 patient. An ambulatory surgical facility may be operated as a part of a  
38 physician or dentist's office, provided the facility is licensed under  
39 G.S. Chapter 131E, Article 6, Part D, but the performance of  
40 incidental, limited ambulatory surgical procedures which do not  
41 constitute an ambulatory surgical program as defined in subdivision  
42 ~~(1a)~~(1b) and which are performed in a physician's or dentist's office  
43 does not make that office an ambulatory surgical facility.

- 1           (1a) 'Air ambulance' means aircraft used to provide air transport of sick or  
2           injured persons between destinations within the State.
- 3           (1a)       (1b) 'Ambulatory surgical program' means a formal program for  
4                    providing on a same-day basis those surgical procedures which  
5                    require local, regional or general anesthesia and a period of post-  
6                    operative observation to patients whose admission for more than 24  
7                    hours is determined, prior to surgery, to be medically unnecessary.
- 8           (2) 'Bed capacity' means space used exclusively for inpatient care,  
9                    including space designed or remodeled for licensed inpatient beds even  
10                  though temporarily not used for such purposes. The number of beds to  
11                  be counted in any patient room shall be the maximum number for  
12                  which adequate square footage is provided as established by rules of  
13                  the Department except that single beds in single rooms are counted  
14                  even if the room contains inadequate square footage. The term 'bed  
15                  capacity' also refers to the number of dialysis stations in kidney  
16                  disease treatment centers, including freestanding dialysis units.
- 17           (2a) 'Bone marrow transplantation services' means the process of infusing  
18                  bone marrow into persons with diseases to stimulate the production of  
19                  blood cells.
- 20           (2b) 'Burn intensive care services' means services provided in a unit  
21                  designed to care for patients who have been severely burned.
- 22           (2c) 'Campus' means the adjacent grounds and buildings, or grounds and  
23                  buildings not separated by more than a public right-of-way, of a health  
24                  service facility and related health care entities.
- 25           (2a)       (2d) 'Capital expenditure' means an expenditure for a project,  
26                    including but not limited to the cost of construction, engineering,  
27                    and equipment which under generally accepted accounting principles  
28                    is not properly chargeable as an expense of operation and  
29                    maintenance. Capital expenditure includes, in addition, the fair  
30                    market value of an acquisition made by donation, lease, or  
31                    comparable arrangement by which a person obtains equipment, the  
32                    expenditure for which would have been considered a capital  
33                    expenditure under this part if the person had acquired it by purchase.
- 34           (2e) 'Cardiac angioplasty equipment' means the cardiac catheterization  
35                  equipment used in surgery for the restoration, repair, or reconstruction  
36                  of coronary blood vessels.
- 37           (2f) 'Cardiac catheterization equipment' means the equipment required to  
38                  perform diagnostic procedures or therapeutic intervention in which a  
39                  catheter is introduced into a vein or artery and threaded through the  
40                  circulatory system to the heart.
- 41           (3) ~~'Certificate of need' means a written order of the Department setting~~  
42                  ~~forth the affirmative findings that a proposed project sufficiently~~  
43                  ~~satisfies the plans, standards, and criteria prescribed for such projects~~  
44                  ~~by this Article and by rules of the Department as provided in G.S.~~

- 1                   ~~131E-183(a) and~~ which affords the person so designated as the legal  
2                   proponent of the proposed project the opportunity to proceed with the  
3                   development of such project.
- 4                   (4) ~~'Certified cost estimate' means an estimate of the total cost of a project~~  
5                   ~~certified by a licensed architect or engineer which is based on:~~
- 6                   a. ~~Preliminary plans and specifications;~~  
7                   b. ~~Estimates of the cost of equipment certified by the manufacturer~~  
8                   ~~or vendor; and~~  
9                   e. ~~Estimates of the cost of management and administration of the~~  
10                  ~~project.~~
- 11                  (5) 'Change in bed capacity' means (i) any relocation of health service  
12                  facility beds, or dialysis stations from one licensed facility or campus  
13                  to another, or (ii) any redistribution of health service facility bed  
14                  capacity among the categories of health service facility bed as defined  
15                  in G.S. 131E-176(9c), or (iii) any increase in the number of health  
16                  service facility beds, or dialysis stations in kidney disease treatment  
17                  centers, including freestanding dialysis units.
- 18                  (5a) 'Chemical dependency treatment facility' means a public or private  
19                  facility, or unit in a facility, which is engaged in providing 24-hour a  
20                  day treatment for chemical dependency or substance abuse. This  
21                  treatment may include detoxification, administration of a therapeutic  
22                  regimen for the treatment of chemically dependent or substance  
23                  abusing persons and related services. The facility or unit may be:
- 24                  a. A unit within a general hospital or an attached or freestanding  
25                  unit of a general hospital licensed under Article 5, Chapter  
26                  131E, of the General Statutes,  
27                  b. A unit within a psychiatric hospital or an attached or  
28                  freestanding unit of a psychiatric hospital licensed under Article  
29                  1A of General Statutes Chapter 122 or Article 2 of General  
30                  Statutes Chapter 122C,  
31                  c. A freestanding facility specializing in treatment of persons who  
32                  are substance abusers or chemically dependent licensed under  
33                  Article 1A of General Statutes Chapter 122 or Article 2 of  
34                  General Statutes Chapter 122C; and may be identified as  
35                  'chemical dependency, substance abuse, alcoholism, or drug  
36                  abuse treatment units,' 'residential chemical dependency,  
37                  substance abuse, alcoholism or drug abuse facilities,' 'social  
38                  setting detoxification facilities' and 'medical detoxification  
39                  facilities,' or by other names if the purpose is to provide  
40                  treatment of chemically dependent or substance abusing  
41                  persons, but shall not include halfway houses or recovery farms.
- 42                  (5b) 'Chemical dependency treatment beds' means beds that are licensed for  
43                  detoxification or for the inpatient treatment of chemical dependency.

- 1 Residential treatment beds for the treatment of chemical dependency  
2 or substance abuse are chemical dependency treatment beds.
- 3 (6) 'Department' means the North Carolina Department of Human  
4 Resources.
- 5 (7) To 'develop' when used in connection with health services, means to  
6 undertake those activities which will result in the offering of  
7 institutional health service not provided in the previous 12-month  
8 reporting period or the incurring of a financial obligation in relation to  
9 the offering of such a service.
- 10 (7a) 'Diagnostic center' means a freestanding facility, program, or provider,  
11 including but not limited to, physicians offices, clinical laboratories,  
12 radiology centers, and mobile diagnostic programs, in which the total  
13 cost of all the medical diagnostic equipment utilized by the facility  
14 exceeds two hundred fifty thousand dollars (\$250,000). In  
15 determining whether the medical diagnostic equipment in a diagnostic  
16 center costs more than two hundred fifty thousand dollars (\$250,000),  
17 the costs of the equipment, studies, surveys, designs, plans, working  
18 drawings, specifications, construction, installation, and other activities  
19 essential to acquiring and making operational the equipment shall be  
20 included. If the equipment is acquired for less than fair market value,  
21 the cost of the equipment shall be deemed to be the fair market value.
- 22 (7b) 'Expedited review' means the status given to an application's review  
23 process when the applicant petitions for the review and the Department  
24 approves the request based on findings that all of the following are  
25 met:
- 26 a. The review is not competitive.  
27 b. The proposed capital expenditure is less than five million  
28 dollars (\$5,000,000).  
29 c. A request for a public hearing is not received within the time  
30 frame defined in G.S. 131E-185.  
31 d. The agency has not determined that a public hearing is in the  
32 public interest.
- 33 (7c) 'Gamma knife' means equipment which emits photon beams from a  
34 stationary radioactive cobalt source to treat lesions deep within the  
35 brain through stereotactic radiosurgery.
- 36 (8),(9) Repealed by Session Laws 1987, c. 511, s. 1.
- 37 (9a) 'Health service' means an organized, interrelated medical, diagnostic,  
38 therapeutic, and/or rehabilitative activity that is integral to the  
39 prevention of disease or the clinical management of a sick, injured, or  
40 disabled person. 'Health service' does not include administrative and  
41 other activities that are not integral to clinical management.
- 42 (9b) 'Health service facility' means a hospital; psychiatric facility;  
43 rehabilitation facility; long term care facility; kidney disease treatment  
44 center, including freestanding hemodialysis units; intermediate care

1 facility for the mentally retarded; home health agency office; chemical  
2 dependency treatment facility; diagnostic center; oncology treatment  
3 center; and ambulatory surgical facility.

4 (9c) 'Health service facility bed' means a bed licensed for use in a health  
5 service facility in the categories of (i) acute care beds; (ii) psychiatric  
6 beds; (iii) rehabilitation beds; (iv) nursing care beds; (v) intermediate  
7 care beds for the mentally retarded; and (vi) chemical dependency  
8 treatment beds.

9 (10) 'Health maintenance organization (HMO)' means a public or private  
10 organization which has received its certificate of authority under  
11 Article 67 of Chapter 58 of the General Statutes and which either is a  
12 qualified health maintenance organization under Section 1310(d) of  
13 the Public Health Service Act or:

14 a. Provides or otherwise makes available to enrolled participants  
15 health care services, including at least the following basic  
16 health care services: usual physician services, hospitalization,  
17 laboratory, X ray, emergency and preventive services, and out-  
18 of-area coverage;

19 b. Is compensated, except for copayments, for the provision of the  
20 basic health care services listed above to enrolled participants  
21 by a payment which is paid on a periodic basis without regard  
22 to the date the health care services are provided and which is  
23 fixed without regard to the frequency, extent, or kind of health  
24 service actually provided; and

25 c. Provides physicians' services primarily (i) directly through  
26 physicians who are either employees or partners of such  
27 organizations, or (ii) through arrangements with individual  
28 physicians or one or more groups of physicians organized on a  
29 group practice or individual practice basis.

30 (10a) 'Heart-lung bypass machine' means the equipment used to perform  
31 extra-corporeal circulation and oxygenation during surgical  
32 procedures.

33 (11) Repealed by Session Laws 1991, c. 692, s. 1.

34 (12) 'Home health agency' means a private organization or public agency,  
35 whether owned or operated by one or more persons or legal entities,  
36 which furnishes or offers to furnish home health services.

37 'Home health services' means items and services furnished to an  
38 individual by a home health agency, or by others under arrangements  
39 with such others made by the agency, on a visiting basis, and except  
40 for paragraph e. of this subdivision, in a place of temporary or  
41 permanent residence used as the individual's home as follows:

42 a. Part-time or intermittent nursing care provided by or under the  
43 supervision of a registered nurse;

44 b. Physical, occupational or speech therapy;

- 1 c. Medical social services, home health aid services, and other  
2 therapeutic services;
- 3 d. Medical supplies, other than drugs and biologicals and the use  
4 of medical appliances;
- 5 e. Any of the foregoing items and services which are provided on  
6 an outpatient basis under arrangements made by the home  
7 health agency at a hospital or nursing home facility or  
8 rehabilitation center and the furnishing of which involves the  
9 use of equipment of such a nature that the items and services  
10 cannot readily be made available to the individual in his home,  
11 or which are furnished at such facility while he is there to  
12 receive any such item or service, but not including  
13 transportation of the individual in connection with any such  
14 item or service.
- 15 (13) 'Hospital' means a public or private institution which is primarily  
16 engaged in providing to inpatients, by or under supervision of  
17 physicians, diagnostic services and therapeutic services for medical  
18 diagnosis, treatment, and care of injured, disabled, or sick persons, or  
19 rehabilitation services for the rehabilitation of injured, disabled, or sick  
20 persons. The term includes all facilities licensed pursuant to G.S.  
21 131E-77 of the General Statutes.
- 22 (13a) 'Hospice' means any coordinated program of home care with  
23 provision for inpatient care for terminally ill patients and their  
24 families. This care is provided by a medically directed  
25 interdisciplinary team, directly or through an agreement under the  
26 direction of an identifiable hospice administration. A hospice  
27 program of care provides palliative and supportive medical and other  
28 health services to meet the physical, psychological, social, spiritual  
29 and special needs of patients and their families, which are  
30 experienced during the final stages of terminal illness and during  
31 dying and bereavement.
- 32 (14) Repealed by Session Laws 1987, c. 511, s. 1.
- 33 (14a) 'Intermediate care facility for the mentally retarded' means facilities  
34 licensed pursuant to Article 2 of Chapter 122C of the General  
35 Statutes for the purpose of providing health and habilitative services  
36 based on the developmental model and principles of normalization  
37 for persons with mental retardation, autism, cerebral palsy, epilepsy  
38 or related conditions.
- 39 (14b) Repealed by Session Laws 1991, c. 692, s. 1.
- 40 (14c) 'Long term care facility' means a health service facility whose bed  
41 complement of health service facility beds is composed principally  
42 of nursing care facility beds.
- 43 (14d) 'Lithotripter' means extra-corporeal shock wave technology used to  
44 treat persons with kidney stones and gallstones.

- 1           (14e) 'Magnetic resonance imaging scanner' means medical imaging  
2           equipment that uses nuclear magnetic resonance.
- 3           (14f) 'Major medical equipment' means a single unit or single system of  
4           components with related functions which is used to provide medical  
5           and other health services and which costs more than seven hundred  
6           fifty thousand dollars (\$750,000). In determining whether the major  
7           medical equipment costs more than seven hundred fifty thousand  
8           dollars (\$750,000), the costs of the equipment, studies, surveys,  
9           designs, plans, working drawings, specifications, construction,  
10           installation, and other activities essential to acquiring and making  
11           operational the major medical equipment shall be  
12           included. If the major medical equipment is acquired for less than  
13           fair market value, the major medical equipment cost shall be deemed  
14           to be the fair market value. Major medical equipment does not  
15           include replacement equipment as defined in this section.
- 16           (15) Repealed by Session Laws 1987, c. 511, s. 1.
- 17           (15a) 'Multispecialty ambulatory surgical program' means a formal  
18           program for providing on a same-day basis surgical procedures for at  
19           least three of the following specialty areas: gynecology,  
20           otolaryngology, plastic surgery, general surgery, ophthalmology,  
21           orthopedic, or oral surgery.
- 22           (15b) 'Neonatal intensive care services' means those services provided by a  
23           health service facility to high risk newborn infants who require  
24           constant nursing care, including but not limited to continuous  
25           cardiopulmonary and other supportive care.
- 26           (16) 'New institutional health services' means any of the following:
- 27           a.       The construction, development, or other establishment of a new  
28           health service ~~facility;~~ facility.
- 29           b.       The obligation by any person of ~~any~~ a capital expenditure ~~on~~  
30           ~~behalf of or for a health service facility as defined in subsection(9b)~~  
31           ~~of this section~~ exceeding two million dollars (\$2,000,000) to  
32           develop or expand a health service or a health service facility,  
33           other than one to acquire an existing health service facility or to  
34           replace such a facility destroyed or irreparably damaged by  
35           accident or natural disaster. The cost of any studies, surveys,  
36           designs, plans, working drawings, specifications, and other  
37           activities, including staff effort and consulting and other  
38           services, essential to the acquisition, improvement, expansion,  
39           or replacement of any plant or equipment with respect to which  
40           an expenditure is made shall be included in determining if the  
41           expenditure exceeds two million dollars (\$2,000,000); dollars  
42           (\$2,000,000).
- 43           c.       Any change in bed capacity as defined in ~~G.S.131E-176(5);~~ G.S.  
44           131E-176(5).



- 1 d. The offering of dialysis services or home health services by or  
2 on behalf of a health service facility if those services were not  
3 offered within the previous 12 months by or on behalf of the  
4 ~~facility;~~ facility.
- 5 e. A change in a project that was subject to certificate of need  
6 review and for which a certificate of need was issued, if the  
7 change is proposed during the development of the project or  
8 within one year after the project was completed. For purposes  
9 of this subdivision, a change in a project is a change of more  
10 than fifteen percent (15%) of the approved capital expenditure  
11 amount or the addition of a health service that is to be located in  
12 the facility, or portion thereof, that was constructed or  
13 developed in the ~~project;~~ project.
- 14 f. The development or offering of a health service as listed in this  
15 subdivision by or on behalf of a health service facility any  
16 person: if the service was not offered by or on behalf of the  
17 health service facility in the previous 12 months and if the  
18 annual operating costs of the service equal or exceed one  
19 million dollars (\$1,000,000), or the expansion of an existing  
20 health service when an annual operating cost of one million  
21 dollars (\$1,000,000) is directly associated with the offering of  
22 the expanded portion of the service;
- 23 1. Bone marrow transplantation services.  
24 2. Burn intensive care services.  
25 3. Neonatal intensive care services.  
26 4. Open heart surgery services.  
27 5. Solid organ transplantation services.
- 28 fl. The acquisition by purchase, donation, lease, transfer, or  
29 comparable arrangement of any of the following equipment by  
30 or on behalf of any person:
- 31 1. Air ambulance.  
32 2. Cardiac angioplasty equipment.  
33 3. Cardiac catheterization equipment.  
34 4. Gamma knife.  
35 5. Heart-lung bypass machine.  
36 6. Lithotripter.  
37 7. Magnetic resonance imaging scanner.  
38 8. Positron emission tomography scanner.
- 39 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- 40 l. The purchase, lease, or acquisition of any health service facility,  
41 or portion thereof, or a controlling interest in the health service  
42 facility or portion thereof, if the health service facility was  
43 developed under a certificate of need issued pursuant to ~~G.S.~~  
44 ~~131E-180;~~ G.S. 131E-180.

- 1 m. Any conversion of nonhealth service facility beds to  
2 health service facility ~~beds~~, beds.
- 3 n. The construction, development, or other establishment of a  
4 hospice if the operating budget thereof is in excess of one  
5 hundred thousand dollars (\$100,000).
- 6 o. The opening of an additional office by an existing home health  
7 agency within its service area as defined by rules adopted by the  
8 Department; or the opening of any office by an existing home  
9 health agency outside its service area as defined by rules  
10 adopted by the Department.
- 11 p. The acquisition by purchase, donation, lease, transfer, or  
12 comparable arrangement by any person of major medical  
13 equipment.
- 14 q. The relocation of a health service facility from one service area  
15 to another.
- 16 r. The conversion of a specialty ambulatory surgical program to a  
17 multispecialty ambulatory surgical program or the addition of a  
18 specialty to a specialty ambulatory surgical program.
- 19 (17) 'North Carolina State Health Coordinating Council' means the  
20 Council that prepares, with the Department of Human Resources, the  
21 State Medical Facilities Plan, ~~a component of the State Health Plan~~ Plan.
- 22 (17a) 'Nursing care' means:
- 23 a. Skilled nursing care and related services for residents who  
24 require medical or nursing care;
- 25 b. Rehabilitation services for the rehabilitation of injured,  
26 disabled, or sick persons; or
- 27 c. Health-related care and services provided on a regular basis to  
28 individuals who because of their mental or physical condition  
29 require care and services above the level of room and board,  
30 which can be made available to them only through institutional  
31 facilities.
- 32 These are services which are not primarily for the care and treatment  
33 of mental diseases.
- 34 (18) To 'offer,' when used in connection with health services, means that  
35 the health service facility or health maintenance organization holds  
36 itself out as capable of providing, or as having the means for the  
37 provision of, specified health services.
- 38 (18a) 'Oncology treatment center' means a facility, program, or provider,  
39 other than an existing health service facility that provides services for  
40 diagnosis, evaluation, or treatment of cancer and its aftereffects or  
41 secondary results and for which the total cost of all the medical  
42 equipment utilized by the center, exceeds two hundred fifty thousand  
43 dollars (\$250,000). In determining whether costs are more than two  
44 hundred fifty thousand dollars (\$250,000), the costs of equipment,

1 studies, surveys, designs, plans, working drawings, specifications,  
2 construction, installation, and other activities essential to acquiring and  
3 making operational the facility, program, or provider shall be included.  
4 If the equipment is acquired for less than fair market value, the cost of  
5 the equipment shall be deemed to be the fair market value.

6 (18b) 'Open heart surgery services' means the provision of surgical  
7 procedures that utilize a heart-lung bypass machine during surgery to  
8 correct cardiac and coronary artery disease or defects.

9 (19) 'Person' means an individual, a trust or estate, a partnership, a  
10 corporation, including associations, joint stock companies, and  
11 insurance companies; the State, or a political subdivision or agency or  
12 instrumentality of the State.

13 (19a) 'Positron emission tomography scanner' means equipment that utilizes  
14 a computerized radiographic technique that employs radioactive  
15 substances to examine the metabolic activity of various body  
16 structures.

17 (20) 'Project' or 'capital expenditure project' means a proposal to undertake  
18 a capital expenditure that results in the offering of a new institutional  
19 health service as defined by this Article. A project, or capital  
20 expenditure project, or proposed project may refer to the project from  
21 its earliest planning stages up through the point at which the specified  
22 new institutional health service may be offered. In the case of facility  
23 construction, the point at which the new institutional health service  
24 may be offered must take place after the facility is capable of being  
25 fully licensed and operated for its intended use, and at that time it shall  
26 be considered a health service facility.

27 (21) 'Psychiatric facility' means a public or private facility licensed  
28 pursuant to Article 2 of Chapter 122C of the General Statutes and  
29 which is primarily engaged in providing to inpatients, by or under the  
30 supervision of a physician, psychiatric services for the diagnosis and  
31 treatment of mentally ill persons.

32 (22) 'Rehabilitation facility' means a public or private inpatient facility  
33 which is operated for the primary purpose of assisting in the  
34 rehabilitation of disabled persons through an integrated program of  
35 medical and other services which are provided under competent,  
36 professional supervision.

37 (22a) 'Replacement equipment' means equipment that costs less than two  
38 million dollars (\$2,000,000) and is purchased for the sole purpose of  
39 replacing comparable major medical equipment currently in use which  
40 will be sold or otherwise disposed of when replaced. In determining  
41 whether the replacement equipment costs less than two million dollars  
42 (\$2,000,000), the costs of equipment, studies, surveys, designs, plans,  
43 working drawings, specifications, construction, installation, and other  
44 activities essential to acquiring and making operational the

1 replacement equipment shall be included. If the replacement  
2 equipment is acquired for less than fair market value, the cost of the  
3 equipment shall be deemed to be the fair market value.

4 (23) Repealed by Session Laws 1991, c. 692, s. 1.

5 (24) ~~'State Health Plan' means the plan prepared by the Department of~~  
6 ~~Human Resources and the North Carolina State Health Coordinating~~  
7 ~~Council and approved by the Governor.~~

8 (24a) 'Service area' means the area of the State, as defined in the State  
9 Medical Facilities Plan or in rules adopted by the Department, which  
10 receives services from a health service facility.

11 (24b) 'Solid organ transplantation services' means the provision of surgical  
12 procedures and the interrelated medical services that accompany the  
13 surgery to remove an organ from a patient and surgically implant an  
14 organ from a donor.

15 (24c) 'Specialty ambulatory surgical program' means a formal program for  
16 providing on a same-day basis surgical procedures for only the  
17 specialty areas identified on the ambulatory surgical facility's 1993  
18 Application for Licensure as an Ambulatory Surgical Center and  
19 authorized by its certificate of need.

20 (25) ~~'State Medical Facilities Plan' means a component of the State Health~~  
21 ~~Plan~~ the plan prepared by the Department of Human Resources and the  
22 North Carolina State Health Coordinating Council, and approved by  
23 the Governor.

24 (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.

25 (27) Repealed by Session Laws 1987, c. 511, s. 1."

26 Sec. 3. G.S. 131E-177 reads as rewritten:

27 **"§ 131E-177. Department of Human Resources is designated State Health**  
28 **Planning and Development Agency; powers and duties.**

29 The Department of Human Resources is designated as the State Health Planning and  
30 Development Agency for the State of North Carolina, and is empowered to exercise the  
31 following powers and duties:

32 (1) To establish standards and criteria or plans required to carry out the  
33 provisions and purposes of this Article and to adopt rules pursuant to  
34 Chapter 150B of the General Statutes, to carry out the purposes and  
35 provisions of this Article;

36 (2) Adopt, amend, and repeal such rules and regulations, consistent with  
37 the laws of this State, as may be required by the federal government  
38 for grants-in-aid for health service facilities and health planning which  
39 may be made available by the federal government. This section shall  
40 be liberally construed in order that the State and its citizens may  
41 benefit from such grants-in-aid;

42 (3) Define, by rule, procedures for submission of periodic reports by  
43 persons or health service facilities subject to agency review under this  
44 Article;

- 1 (4) Develop policy, criteria, and standards for health service facilities  
 2 planning, conduct statewide inventories of and make determinations of  
 3 need for health service facilities, and develop a State ~~Health~~ Medical  
 4 Facilities Plan;
- 5 (5) Implement, by rule, criteria for project review;
- 6 (6) Have the power to grant, deny, or withdraw a certificate of need and to  
 7 impose such sanctions as are provided for by this Article;
- 8 (7) Solicit, accept, hold and administer on behalf of the State any grants or  
 9 bequests of money, securities or property to the Department for use by  
 10 the Department in the administration of this Article; and
- 11 (8) Repealed by Session Laws 1987, c. 511, s. 1.
- 12 (9) Establish and collect fees for submitting applications for ~~certificates of~~  
 13 ~~need, which fees shall be based on the total cost of the project for which the~~  
 14 ~~applicant is applying~~ certificates of need. This fee may not exceed  
 15 fifteen thousand dollars ~~(\$15,000) and may not be less than four hundred~~  
 16 ~~dollars (\$400.00).~~ (\$15,000).
- 17 (10) The authority to review all records in any recording medium of any  
 18 person or health service facility subject to agency review under this  
 19 Article which pertain to construction and acquisition activities, staffing  
 20 or costs and charges for patient care, including but not limited to,  
 21 construction contracts, architectural contracts, consultant contracts,  
 22 purchase orders, cancelled checks, accounting and financial records,  
 23 debt instruments, loan and security agreements, staffing records,  
 24 utilization statistics and any other records the Department deems to be  
 25 reasonably necessary to determine compliance with this Article.

26 The Secretary of Human Resources shall have final decision-making authority with  
 27 regard to all functions described in this section."

28 Sec. 4. G.S. 131E-178 reads as rewritten:

29 **"§ 131E-178. Activities requiring certificate of need.**

30 (a) No person shall offer or develop a new institutional health service without  
 31 first obtaining a certificate of need from the Department; provided, however, no hospital  
 32 licensed pursuant to Article 5 of this Chapter that was established to serve a minority  
 33 population that would not otherwise have been served and that continues to serve a  
 34 minority population may be required to obtain a certificate of need for transferring up to  
 35 65 beds to nursing care facility beds.

36 (b) No person shall make an acquisition by donation, lease, transfer, or  
 37 comparable arrangement without first obtaining a certificate of need from the  
 38 Department, if the acquisition would have been a new institutional health service if it  
 39 had been made by purchase. In determining whether an acquisition would have been a  
 40 new institutional health service the fair market value of the asset shall be deemed to be  
 41 the purchase price.

42 (c) No person shall incur an obligation for a capital expenditure which is a new  
 43 institutional health service without first obtaining a certificate of need from the  
 44 Department. An obligation for a capital expenditure is incurred when:

- 1 (1) An enforceable contract, excepting contracts which are expressly  
2 contingent upon issuance of a certificate of need, is entered into by a  
3 person for the construction, acquisition, lease or financing of a capital  
4 asset;
- 5 (2) A person takes formal action to commit funds for a construction  
6 project undertaken as his own contractor; or
- 7 (3) In the case of donated property, the date on which the gift is  
8 completed.

9 (d) Where the estimated cost of a proposed capital ~~expenditure~~ expenditure,  
10 including the fair market value of equipment acquired by purchase, lease, transfer, or  
11 other comparable arrangement, is certified by a licensed architect or engineer to be  
12 equal to or less than the expenditure minimum for capital expenditure for new  
13 institutional health services, such expenditure shall be deemed not to exceed the  
14 ~~expenditure minimum for capital expenditures~~ amount for new institutional health services  
15 regardless of the actual amount expended, provided that the following conditions are  
16 met:

- 17 (1) The certified estimated cost is prepared in writing 60 days or more  
18 before the obligation for the capital expenditure is incurred. Certified  
19 cost estimates shall be available for inspection at the facility and sent  
20 to the Department upon its request.
- 21 (2) The facility on whose behalf the expenditure was made notifies the  
22 Department in writing within 30 days of the date on which such  
23 expenditure is made if the expenditure exceeds the expenditure  
24 minimum for capital expenditures. The notice shall include a copy of  
25 the certified cost estimate.

26 (e) The Department may grant certificates of need which permit capital  
27 expenditures only for predevelopment activities. Predevelopment activities include the  
28 preparation of architectural designs, plans, working drawings, or specifications, the  
29 preparation of studies and surveys, and the acquisition of a potential site."

30 Sec. 5. G.S. 131E-181 reads as rewritten:

31 "**§ 131E-181. Nature of certificate of need.**

32 (a) A certificate of need shall be valid only for the defined scope, physical  
33 location, and person named in the application. A certificate of need shall not be  
34 transferred or assigned except as provided in G.S. 131E-189(c).

35 (b) A recipient of a certificate of need, or any person who may subsequently  
36 acquire, in any manner whatsoever permitted by law, the service for which that  
37 certificate of need was issued, is required to materially comply with the representations  
38 made in its application for that certificate of need. The Department shall require any  
39 recipient of a certificate of need, or its successor, whose service is in operation to  
40 submit to the Department evidence that the recipient, or its successor, is in material  
41 compliance with the representations made in its application for the certificate of need  
42 which granted the recipient the right to operate that service. In determining whether the  
43 recipient of a certificate of need, or its successor, is operating a service which materially  
44 differs from the representations made in its application for that certificate of need, the

1 Department shall consider cost increases to the recipient, or its successor, including, but  
2 not limited to, the following:

- 3 (1) Any increase in the consumer price index;
- 4 (2) Any increased cost incurred because of Government requirements,  
5 including federal, State, or any political subdivision thereof; and
- 6 (3) Any increase in cost due to professional fees or the purchase of  
7 services and supplies.

8 (c) Whenever a certificate of need is issued more than 12 months after the  
9 application for the certificate of need began review, the Department shall adjust the  
10 capital expenditure amount proposed by increasing it to reflect any inflation in the  
11 Department of Commerce's Construction Cost Index that has occurred since the date  
12 when the application began review; and the Department shall use this recalculated  
13 capital expenditure amount in the certificate of need issued for the project.

14 (d) A project authorized by a certificate of need is complete when the health  
15 service or the health service facility for which the certificate of need was issued is  
16 licensed and certified and is in material compliance with the representations made in the  
17 certificate of need application."

18 Sec. 6. G.S. 131E-183 reads as rewritten:

19 **"§ 131E-183. Review criteria.**

20 (a) The Department shall review all applications utilizing the criteria outlined in  
21 this subsection and shall determine that an application is either consistent with or not in  
22 conflict with these criteria before a certificate of need for the proposed project shall be  
23 issued.

24 (1) The proposed project shall be consistent with applicable policies and  
25 ~~projections-need determinations~~ in the State Medical Facilities Plan, the  
26 ~~needs-projection-need determination~~ of which constitutes a  
27 determinative limitation on the ~~number-of-provision-of-any-health~~  
28 service, health service facility, health service facility beds, dialysis  
29 stations, ambulatory surgical facilities, operating rooms, or home health  
30 agencies-offices that may be allocated. may be approved.

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

32 (3) The applicant shall identify the population to be served by the  
33 proposed project, and shall demonstrate the need that this population  
34 has for the services proposed, and the extent to which all residents of  
35 the area, and, in particular, low income persons, racial and ethnic  
36 minorities, women, handicapped persons, the elderly, and other  
37 underserved groups are likely to have access to the services proposed.

38 (3a) In the case of a reduction or elimination of a service, including the  
39 relocation of a facility or a service, the applicant shall demonstrate that  
40 the needs of the population presently served will be met adequately by  
41 the proposed relocation or by alternative arrangements, and the effect  
42 of the reduction, elimination or relocation of the service on the ability  
43 of low income persons, racial and ethnic minorities, women,

- 1                   handicapped persons, and other underserved groups and the elderly to  
2                   obtain needed health care.
- 3           (4)       Where alternative methods of meeting the needs for the proposed  
4                   project exist, the applicant shall demonstrate that the least costly or  
5                   most effective alternative has been proposed.
- 6           (5)       Financial and operational projections for the project shall demonstrate  
7                   the availability of funds for capital and operating needs as well as the  
8                   immediate and long-term financial feasibility of the proposal, based  
9                   upon reasonable projections of the costs of and charges for providing  
10                  health services by the person proposing the service.
- 11          (6)       The applicant shall demonstrate that the proposed project will not  
12                  result in unnecessary duplication of existing or approved health service  
13                  capabilities or facilities.
- 14          (7)       The applicant shall show evidence of the availability of resources,  
15                  including health manpower and management personnel, for the  
16                  provision of the services proposed to be provided. ~~Further, the applicant  
17                  shall show that the use of these resources for provision of these services will  
18                  not preclude alternative uses of these resources to fulfill other more  
19                  important needs identified by the applicable State Health Plan.~~
- 20          (8)       The applicant shall demonstrate that the provider of the proposed  
21                  services will make available, or otherwise make arrangements for, the  
22                  provision of the necessary ancillary and support services. The  
23                  applicant shall also demonstrate that the proposed service will be  
24                  coordinated with the existing health care system.
- 25          (9)       An applicant proposing to provide a substantial portion of the project's  
26                  services to individuals not residing in the health service area in which  
27                  the project is located, or in adjacent health service areas, shall  
28                  document the special needs and circumstances that warrant service to  
29                  these individuals.
- 30          (10)       When applicable, the applicant shall show that the special needs of  
31                  health maintenance organizations will be fulfilled by the project.  
32                  Specifically, the applicant shall show that the project accommodates:
- 33                  a.       The needs of enrolled members and reasonably anticipated new  
34                          members of the HMO for the health service to be provided by  
35                          the organization; and
- 36                  b.       The availability of new health services from non-HMO  
37                          providers or other HMOs in a reasonable and cost-effective  
38                          manner which is consistent with the basic method of operation  
39                          of the HMO. In assessing the availability of these health  
40                          services from these providers, the applicant shall consider only  
41                          whether the services from these providers:
- 42                          1.       Would be available under a contract of at least five years'  
43                          duration;





- 1 (14) The applicant shall demonstrate that the proposed health services  
2 accommodate the clinical needs of health professional training  
3 programs in the area, as applicable.
- 4 (15) to (18) Repealed by Session Laws 1987, c. 511, s. 1.
- 5 (18a) The applicant shall demonstrate the expected effects of the proposed  
6 services on competition in the proposed service area, including how  
7 any enhanced competition will have a positive impact upon the cost  
8 effectiveness, quality, and access to the services proposed; and in the  
9 case of applications for services where competition between providers  
10 will not have a favorable impact on cost effectiveness, quality, and  
11 access to the services proposed, the applicant shall demonstrate that its  
12 application is for a service on which competition will not have a  
13 favorable impact.
- 14 (19) Repealed by Session Laws 1987, c. 511, s. 1.
- 15 (20) An applicant already involved in the provision of health  
16 services shall provide evidence that quality care has been provided  
17 in the past.
- 18 (21) Repealed by Session Laws 1987, c. 511, s. 1.
- 19 (b) The Department is authorized to adopt rules for the review of particular types  
20 of applications that will be used in addition to those criteria outlined in subsection (a) of  
21 this section and may vary according to the purpose for which a particular review is  
22 being conducted or the type of health service reviewed. No such rule adopted by the  
23 Department shall require an academic medical center teaching hospital, as defined by  
24 the State Medical Facilities Plan, to demonstrate that any facility or service at another  
25 hospital is being appropriately utilized in order for that academic medical center  
26 teaching hospital to be approved for the issuance of a certificate of need to develop any  
27 similar facility or service.
- 28 (c) Repealed by Session Laws 1987, c. 511, s. 1."  
29 Sec. 7. G.S. 131E-184 reads as rewritten:
- 30 **"§ 131E-184. Exemptions from review.**
- 31 (a) Except as provided in subsection (b), the Department shall exempt from  
32 certificate of need review a proposed capital expenditure if it receives notice from the  
33 entity proposing to make the capital expenditure, which notice includes an explanation  
34 of why the expenditure is ~~required~~: required, for any of the following:
- 35 (1) To eliminate or prevent imminent safety hazards as defined in federal,  
36 State, or local fire, building, or life safety codes or ~~regulations~~;  
37 regulations.
- 38 (1a) To comply with State licensure ~~standards~~; standards.
- 39 (1b) To comply with accreditation or certification standards which must be  
40 met to receive reimbursement under Title XVIII of the Social Security  
41 Act or payments under a State plan for medical assistance approved  
42 under Title XIX of that ~~act~~; act.
- 43 (2) Repealed by Session Laws 1987, c. 511, s. 1.
- 44 (3) To provide data processing ~~equipment~~; equipment.

- 1 (4) To provide parking, heating or cooling systems, elevators, or other  
2 basic plant or mechanical improvements, unless these activities are  
3 integral portions of a project that involves the construction of a new  
4 health service facility or portion thereof and that is subject to  
5 certificate of need ~~review; or review.~~
- 6 (5) To replace or repair facilities destroyed or damaged by accident or  
7 natural disaster.
- 8 (6) To provide any nonhealth service facility or service.
- 9 (7) To provide replacement equipment.
- 10 (8) To provide for the relocation of a health service facility bed under the  
11 same ownership on the same campus.
- 12 (9) To provide for a physician office building, provided the building does  
13 not include new institutional health services.

14 (b) Those portions of a proposed project which are not proposed for one or more  
15 of the purposes under subsection (a) of this section are subject to certificate of need  
16 review, if these non-exempt portions of the project are new institutional health services  
17 under G.S. 131E-176(16).

18 (c) The Department shall exempt from certificate of need review any conversion  
19 of existing acute care beds to psychiatric beds provided:

- 20 (1) The hospital proposing the conversion has executed a contract with the  
21 Department's Division of Mental Health, Developmental Disabilities,  
22 and Substance Abuse Services and/or one or more of the Area Mental  
23 Health, Developmental Disabilities, and Substance Abuse Authorities  
24 to provide psychiatric beds to patients referred by the contracting  
25 agency or agencies; and
- 26 (2) The total number of beds to be converted shall not be more than twice  
27 the number of beds for which the contract pursuant to subdivision (1)  
28 of this subsection shall provide."

29 Sec. 8. G.S. 131E-185 reads as rewritten:

30 **"§ 131E-185. Review process.**

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

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

- 36 (1) Any person may file written comments and exhibits concerning a  
37 proposal under review with the Department, not later than 30 days  
38 after the date on which the application begins review. These written  
39 comments may include:
- 40 a. Facts relating to the service area proposed in the application;
- 41 b. Facts relating to the representations made by the applicant in its  
42 application, and its ability to perform or fulfill the  
43 representations made;

1 c. Discussion and argument regarding whether, in light of the  
2 material contained in the application and other relevant factual  
3 material, the application complies with relevant review criteria,  
4 plans, and standards.

5 (2) No more than 20 days from the conclusion of the written comment  
6 period, the Department shall ensure that a public hearing is conducted  
7 at a place within the appropriate health service area if one or more of  
8 the following circumstances apply; the review to be conducted is  
9 competitive; the proponent proposes to spend five million dollars  
10 (\$5,000,000) or more; a written request for a public hearing is received  
11 before the end of the written comment period from an affected party as  
12 defined in G.S. 131E-188(c); or the agency determines that a hearing is  
13 in the public interest. At such public hearing oral arguments may be  
14 made regarding the application or applications under review; and this  
15 public hearing shall include the following:

16 a. An opportunity for the proponent of each application under  
17 review to respond to the written comments submitted to the  
18 Department about its application;

19 b. An opportunity for any affected person as defined in G.S. 131E-  
20 188(c), except one of the proponents, to present comments  
21 regarding the applications under review;

22 c. An opportunity for a representative of the Department, or such  
23 other person or persons who are designated by the Department  
24 to conduct the hearing, to question each proponent of  
25 applications under review with regard to the contents of the  
26 application;

27 The Department shall maintain a recording of any required public  
28 hearing on an application until such time as the Department's final  
29 decision is issued, or until a final agency decision is issued pursuant to  
30 a contested case hearing, whichever is later; and any person may  
31 submit a written synopsis or verbatim statement that contains the oral  
32 presentation made at the hearing.

33 (3) The Department may contract or make arrangements with a person or  
34 persons located within each health service area for the conduct of such  
35 public hearings as may be necessary. The Department shall publish, in  
36 each health service area, notice of the contracts that it executes for the  
37 conduct of those hearings.

38 (4) Within 15 days from the beginning of the review of an application or  
39 applications proposing the same service within the same service area,  
40 the Department shall publish notice of the deadline for receipt of  
41 written comments, of the time and place scheduled for the public  
42 hearing regarding the application or applications under review, and of  
43 the name and address of the person or agency that will preside.

1 (5) The Department shall maintain all written comments submitted to it  
2 during the written comment stage and any written submissions  
3 received at the public hearing as part of the Department's file  
4 respecting each application or group of applications under review by it.  
5 The application, written comments, and public hearing comments,  
6 together with all documents that the Department used in arriving at its  
7 decision, from whatever source, and any documents that reflect or set  
8 out the Department's final analysis of the application or applications  
9 under review, shall constitute the Department's record for the  
10 application or applications under review.

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

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

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

22 Sec. 9. G.S. 131E-188 reads as rewritten:

23 "**§ 131E-188. Administrative and judicial review.**

24 (a) After a decision of the Department to issue, deny or withdraw a certificate of  
25 need or exemption or to issue a certificate of need pursuant to a settlement agreement  
26 with an applicant to the extent permitted by law, any affected person, as defined in  
27 subsection (c) of this section, shall be entitled to a contested case hearing under Article  
28 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed  
29 within 30 days after the Department makes its decision. When a petition is filed, the  
30 Department shall send notification of the petition to the proponent of each application  
31 that was reviewed with the application for a certificate of need that is the subject of the  
32 petition. Any affected person shall be entitled to intervene in a contested case.

33 A contested case shall be conducted in accordance with the following timetable:

- 34 (1) An administrative law judge or a hearing officer, as appropriate, shall  
35 be assigned within 15 days after a petition is filed.
- 36 (2) The parties shall complete discovery within 90 days after the  
37 assignment of the administrative law judge or hearing officer.
- 38 (3) The hearing at which sworn testimony is taken and evidence is  
39 presented shall be held within 45 days after the end of the discovery  
40 period.
- 41 (4) The administrative law judge or hearing officer shall make his  
42 recommended decision within 75 days after the hearing.

1 (5) The Department shall make its final decision within 30 days of  
2 receiving the official record of the case from the Office of  
3 Administrative Hearings.

4 The administrative law judge or hearing officer assigned to a case may extend the  
5 deadlines in subdivisions (2) through (4) so long as the administrative law judge or  
6 hearing officer makes his recommended decision in the case within 270 days after the  
7 petition is filed. The Department may extend the deadline in subdivision (5) for up to  
8 30 days by giving all parties written notice of the extension.

9 (a1) On or before the date of filing a petition for a contested case hearing on the  
10 approval of an applicant for a certificate of need, the petitioner shall deposit a bond with  
11 the clerk of superior court where the new institutional health service that is the subject  
12 of the petition is proposed to be located. The bond shall be secured by cash or its  
13 equivalent in an amount equal to five percent (5%) of the cost of the proposed new  
14 institutional health service that is the subject of the petition, but may not be less than  
15 five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A  
16 petitioner who received approval for a certificate of need and is contesting only a  
17 condition in the certificate is not required to file a bond under this subsection.

18 The applicant who received approval for the new institutional health service that is  
19 the subject of the petition may bring an action against a bond filed under this subsection  
20 in the superior court of the county where the bond was filed. Upon finding that the  
21 petition for a contested case was frivolous or filed to delay the applicant, the court may  
22 award the applicant part or all of the bond filed under this subsection. At the conclusion  
23 of the contested case, if the court does not find that the petition for a contested case was  
24 frivolous or filed to delay the applicant, the petitioner shall be entitled to the return of  
25 the bond deposited with the superior court upon demonstrating to the clerk of superior  
26 court where the bond was filed that the contested case hearing is concluded.

27 (b) Any affected person who was a party in a contested case hearing shall be  
28 entitled to judicial review of all or any portion of any final decision of the Department  
29 in the following manner. The appeal shall be to the Court of Appeals as provided in  
30 G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of  
31 appellate procedure. The appeal of the final decision of the Department shall be taken  
32 within 30 days of the receipt of the written notice of ~~final decision~~ decision, ~~required by~~  
33 ~~G.S. 131E-187~~ and notice of appeal shall be filed with the Division of Facility Services,  
34 Department of Human Resources and ~~with~~ served on all other affected persons who  
35 were parties to the contested hearing.

36 (b1) Before filing an appeal of a final decision by the Department granting a  
37 certificate of need, the affected person shall deposit a bond with the Clerk of the Court  
38 of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to  
39 five percent (5%) of the cost of the proposed new institutional health service that is the  
40 subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may  
41 not exceed fifty thousand dollars (\$50,000). A holder of a certificate of need who is  
42 appealing only a condition in the certificate is not required to file a bond under this  
43 subsection.

1 If the Court of Appeals finds that the appeal was frivolous or filed to delay the  
2 applicant, the court shall remand the case to the superior court of the county where a  
3 bond was filed for the contested case hearing on the certificate of need. The superior  
4 court may award the holder of the certificate of need part or all of the bond. The court  
5 shall award the holder of the certificate of need reasonable attorney fees and costs  
6 incurred in the appeal to the Court of Appeals. If the Court of Appeals does not find  
7 that the appeal was frivolous or filed to delay the applicant and does not remand the  
8 case to superior court for a possible award of all or part of the bond to the holder of the  
9 certificate of need, the person originally filing the bond shall be entitled to a return of  
10 the bond.

11 (c) The term 'affected persons' includes: the applicant; ~~the health systems agency~~  
12 ~~for the health service area in which the proposed project is to be located;~~ ~~health systems~~  
13 ~~agencies serving contiguous health service areas or located within the same standard~~  
14 ~~metropolitan statistical area;~~ any person residing within the geographic area served or to  
15 be served by the applicant; any person who regularly uses health service facilities within  
16 that geographic area; health service facilities and health maintenance organizations  
17 (HMOs) located in the health service area in which the project is proposed to be located,  
18 which provide services similar to the services of the facility under review; health service  
19 facilities and HMOs which, prior to receipt by the agency of the proposal being  
20 reviewed, have formally indicated an intention to provide similar services in the future;  
21 third party payers who reimburse health service facilities for services in the health  
22 service area in which the project is proposed to be located; and any agency which  
23 establishes rates for health service facilities or HMOs located in the health service area  
24 in which the project is proposed to be located."

25 Sec. 10. G.S. 131E-189 reads as rewritten:

26 "**§ 131E-189. Withdrawal of a certificate of need.**

27 (a) The Department shall specify in each certificate of need the time the holder  
28 has to make the service or equipment available or to complete the project and the  
29 timetable to be followed. The timetable shall be the one proposed by the holder of the  
30 certificate of need unless the Department specifies a different timetable in its decision  
31 letter. The holder of the certificate shall submit such periodic reports on his progress in  
32 meeting the timetable as may be required by the Department. If no progress report is  
33 provided or, after reviewing the progress, the Department determines that the holder of  
34 the certificate is not meeting the timetable and the holder cannot demonstrate that it is  
35 making good faith efforts to meet the timetable, the Department may withdraw the  
36 certificate. If the Department determines that the holder of the certificate is making a  
37 good faith effort to meet the timetable, the Department may, at the request of the holder,  
38 extend the timetable for a specified period.

39 (b) The Department may withdraw any certificate of need, if the holder of the  
40 certificate fails to develop ~~and operate~~ the service in a manner consistent with the  
41 representations made in the application or with any condition or conditions the  
42 Department placed on the certificate of need.

43 (c) The Department may immediately withdraw any certificate of need if the  
44 holder of the certificate, before completion of the project or operation of the facility,

1 transfers ownership or control of the ~~facility~~facility, the project, or the certificate of  
2 need. Any transfer after that time will be subject to the requirement that the service be  
3 provided consistent with the representations made in the application and any applicable  
4 conditions the Department placed on the certificate of need. Transfers resulting from  
5 death or personal illness or other good cause, as determined by the Department, shall  
6 not result in withdrawal if the Department receives prior written notice of the transfer  
7 and ~~finds good cause~~. ~~Transfers resulting from death shall not result in withdrawal.~~ approves  
8 it."

9 Sec. 11. G.S. 131E-190 reads as rewritten:

10 "**§ 131E-190. Enforcement and sanctions.**

11 (a) Only those new institutional health services which are found by the  
12 Department to be needed as provided in this Article and granted certificates of need  
13 shall be offered or developed within the State.

14 (b) No formal commitments made for financing, construction, or acquisition  
15 regarding the offering or development of a new institutional health service shall be  
16 made by any person unless a certificate of need for such service or activities has been  
17 granted.

18 ~~(c) Nothing in this Article shall be construed as terminating the P.L. 92-603,~~  
19 ~~Section 1122, capital expenditure program or the contract between the State of North~~  
20 ~~Carolina and the United States under that program. The sanctions available under that~~  
21 ~~program and contract, with regard to the determination of whether the amounts~~  
22 ~~attributable to an applicable project or capital expenditure project should be included or~~  
23 ~~excluded in determining payments to the proponent under Titles V, XVIII, and XIX of~~  
24 ~~the Social Security Act, shall remain available to the State.~~

25 (d) If any person proceeds to offer or develop a new institutional health  
26 service without having first obtained a certificate of need for such services, the penalty  
27 for such violation of this Article and rules hereunder may include the withholding of  
28 federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for  
29 reimbursement of capital and operating expenses related to the provision of the new  
30 institutional health service.

31 (e) The Department may revoke or suspend the license of any person who  
32 proceeds to offer or develop a new institutional health service without having first  
33 obtained a certificate of need for such services.

34 (f) The Department may assess a civil penalty of not more than twenty thousand  
35 dollars (\$20,000) against any person who knowingly offers or develops any new  
36 institutional health service within the meaning of this Article without a certificate of  
37 need issued under this Article and the rules pertaining thereto, or in violation of the  
38 terms or conditions of such a certificate, whenever it determines a violation has  
39 occurred and each time the service is provided in violation of this provision. In  
40 determining the amount of the penalty the Department shall consider the degree and  
41 extent of harm caused by the violation and the cost of rectifying the damage. A person  
42 who is assessed a penalty shall be notified of the penalty by registered or certified mail.  
43 The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the  
44 Department shall refer the matter to the Attorney General for collection. For the



1 purpose of this subsection, the word 'person' shall not include an individual in his  
2 capacity as an officer, director, or employee of a person as otherwise defined in this  
3 Article.

4 (g) No agency of the State or any of its political subdivisions may appropriate or  
5 grant funds or financially assist in any way a person, applicant, or facility which is or  
6 whose project is in violation of this Article.

7 (h) If any person proceeds to offer or develop a new institutional health service  
8 without having first obtained a certificate of need for such services, the Secretary of  
9 Human Resources or any person aggrieved, as defined by G.S. 150B-2(6), may bring a  
10 civil action for injunctive relief, temporary or permanent, against the person offering,  
11 developing or operating any new institutional health service. The action may be  
12 brought in the superior court of any county in which the health service facility is located  
13 or in the superior court of Wake County.

14 (i) If the Department determines that the recipient of a certificate of need, or its  
15 successor, is operating a service which materially differs from the representations made  
16 in its application for that certificate of need, the Department may bring an action in  
17 Wake County Superior Court or the superior court of any county in which the certificate  
18 of need is to be utilized for injunctive relief, temporary or permanent, requiring the  
19 recipient, or its successor, to materially comply with the representations in its  
20 application. The Department may also bring an action in Wake County Superior Court  
21 or the superior court of any county in which the certificate of need is to be utilized to  
22 enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in  
23 accordance with this subsection and G.S. 131E-181(b)."

24 Sec. 12. This act is effective upon ratification, and applies to any person,  
25 trust or estate, partnership, corporation, the State, any political subdivision of the State,  
26 and any other comparable entity that undertakes or is undertaking to offer or develop  
27 new institutional health services as defined in G.S. 131E-176(16). This act shall not  
28 affect litigation pending on the date of ratification.