

1 HB370  
2 138030-4  
3 By Representatives McClurkin and Johnson (R)  
4 RFD: Health  
5 First Read: 21-FEB-12

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To amend Sections 22-21-265, 22-21-270, 22-21-271,  
9 and 22-21-275, Code of Alabama 1975, relating to the State  
10 Health Planning and Development Agency and the Certificate of  
11 Need Review Board, to further provide for fees; to provide for  
12 a temporary surcharge on certificate of need applications; to  
13 provide further for costs and processing of cases; and to  
14 provide for direct appeals to the Court of Civil Appeals.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 22-21-265, 22-21-270, 22-21-271,  
17 and 22-21-275, Code of Alabama 1975, are amended to read as  
18 follows:

19 "§22-21-265.

20 "(a) On or after July 30, 1979, no person to which  
21 this article applies shall acquire, construct, or operate a  
22 new institutional health service, as defined in this article,  
23 or furnish or offer, or purport to furnish a new institutional  
24 health service, as defined in this article, or make an  
25 arrangement or commitment for financing the offering of a new  
26 institutional health service, unless the person shall first  
27 obtain from the SHPDA a certificate of need therefor.

1 Notwithstanding any provisions of this article to the  
2 contrary, those facilities and distinct units operated by the  
3 Department of Mental Health and Mental Retardation, and those  
4 facilities and distinct units operating under contract or  
5 subcontract with the Department of Mental Health and Mental  
6 Retardation where the contract constitutes the primary source  
7 of income to the facility, shall not be required to obtain a  
8 certificate of need under this article.

9 "(b) Notwithstanding all other provisions of this  
10 article to the contrary, the replacement of equipment by  
11 health care facilities shall be exempt from certificate of  
12 need review, provided:

13 "(1) The replacement does not change the purpose,  
14 use, or application of the equipment.

15 "(2) The existing equipment is taken out of service.

16 "(3) The replacement equipment does not enable the  
17 health care facility to expand its health services.

18 "(4) The replacement equipment does not enable the  
19 health care facility to provide any health services not  
20 previously provided on a regular basis.

21 "A determination of whether the acquisition of  
22 equipment is exempt from review under this section shall be  
23 made by the Executive Director of the SHPDA upon the filing of  
24 an application requesting the determination, on the form or  
25 forms prescribed by the CON Review Board, together with a fee  
26 in the amount of ~~10~~ 20 percent of the fee provided in Section  
27 22-21-271. If it is determined that the replacement is not

1 reviewable pursuant to this section, the applicant shall be  
2 notified in writing that no certificate of need is required.  
3 The SHPDA shall define an appeals process.

4 "Any provision in this article to the contrary  
5 notwithstanding, ~~no~~ a rural hospital shall only be required to  
6 submit ~~an application~~ a fee equal to 25 percent of the fee  
7 applicable to non-rural hospitals when filing a request for  
8 determination under this section.

9 "(c) Notwithstanding any other provision of this  
10 article to the contrary, the modernization or construction of  
11 a nonclinical building, parking facility, or any other  
12 noninstitutional health services capital item on the existing  
13 campus of a health care facility shall be exempt from  
14 certificate of need review, provided the construction or  
15 modernization does not allow the health care facility to  
16 provide new institutional health services subject to review  
17 and not previously provided on a regular basis.

18 "(d) The SHPDA shall maintain the Alabama State  
19 Health Plan to include separate bed need methodologies for  
20 inpatient psychiatric services, inpatient rehabilitation  
21 services, and inpatient/residential alcohol and drug abuse  
22 services. The SHPDA shall utilize these methodologies in  
23 considering all certificate of need applications.

24 "(e) Notwithstanding all other provisions of this  
25 article to the contrary, the increase in the number of nursing  
26 home beds of a health care facility licensed pursuant to  
27 Section 22-21-260(6) as a skilled nursing care facility or an

1 intermediate care facility, but excluding an increase in the  
2 bed capacity of an intermediate care facility designated as an  
3 ICF-MR by the State Board of Health and operated by the state  
4 Department of Mental Health and Mental Retardation which  
5 facilities shall be governed by the other provisions of this  
6 article, shall be exempt from certificate of need review,  
7 provided:

8 "(1) The increase does not exceed 10 percent of the  
9 total skilled nursing beds of the facility, rounded to the  
10 nearest whole number, or 10 beds, whichever is greater.

11 "(2) The average rate of occupancy for the nursing  
12 home beds of the facility is not less than 95 percent, rounded  
13 to the nearest whole number, for the 24-month period ending on  
14 June 30 of the year immediately preceding the application for  
15 exemption from the certificate of need review.

16 "(3) The aggregate average rate of occupancy for all  
17 other skilled nursing facilities and intermediate nursing  
18 facilities in the same county as the requesting facility's is  
19 not less than 95 percent, rounded to the nearest whole number,  
20 for the 24-month period ending on June 30 of the year  
21 immediately preceding the application for exemption from  
22 certificate of need review.

23 "(4) The increase does not require capital  
24 expenditures exceeding the capital expenditure thresholds  
25 prescribed in Section 22-21-263(a) (2).

1           "(5) The facility has not been granted an increase  
2 of beds under this exemption within the immediately preceding  
3 24-month period.

4           "In calculating the average occupancy for the  
5 facility under subdivision (2) of this subsection and for all  
6 other skilled and intermediate nursing facilities in the same  
7 county under subdivision (3) of this subsection, beds  
8 previously granted, including beds granted after January 1,  
9 1995, to the facility, and to other skilled or intermediate  
10 nursing facilities in the same county as the requesting  
11 facility, pursuant to a certificate of need or to this  
12 exemption shall be deemed built and available for occupancy as  
13 of the date granted regardless of when the beds were placed in  
14 service. SHPDA shall promulgate regulations to determine how  
15 occupancy shall be calculated for the purpose of this  
16 subsection, taking into account certain factors such as, but  
17 without limitation, disregarding beds that have not been  
18 available for use for the three years next preceding the  
19 period for which occupancy is being measured.

20           "(6) The facility has had an average daily census  
21 comprised of 40 percent of Medicaid patients within the fiscal  
22 year ended June 30 immediately prior to filing an application  
23 for exemption under this section.

24           "(7) Any exemption to add beds without a certificate  
25 of need shall expire and be deemed null and void unless the  
26 beds are placed in service not less than 12 months after the  
27 date the exemption is granted. Notwithstanding the foregoing,

1 SHPDA may promulgate rules permitting the Executive Director  
2 of SHPDA to grant one extension not to exceed twelve months  
3 upon a showing of substantial progress. Notwithstanding the  
4 foregoing, any exemption granted by the SHPDA prior to April  
5 10, 1995, for facilities which have agreed to the provisions  
6 of the June 21, 1995 consent decree, is ratified and confirmed  
7 and shall be deemed to have been granted in accordance with  
8 this subsection. In addition, any facility which was granted  
9 an exemption by the SHPDA prior to April 10, 1995, is ratified  
10 and confirmed and shall be deemed to have been approved as of  
11 the latter of the actual date approved or March 3, 1995 and to  
12 have been granted in accordance with this subsection.

13 "A determination of whether the increase in beds is  
14 exempt from review under this section shall be made by the  
15 Executive Director of SHPDA upon the filing of an application  
16 requesting the determination, on the form or forms prescribed  
17 by the CON Review Board, together with a fee in an amount to  
18 be determined by the review board in accordance with Section  
19 22-21-271(a). The SHPDA shall promulgate rules affording an  
20 applicant pursuant to this subsection a right to appeal  
21 adverse rulings.

22 "Applications pursuant to this section for exemption  
23 from certificate of need review for an increase in bed  
24 capacity shall be made only during the 90-day period beginning  
25 January 1 through March 31 of each year.

26 "The provisions of this section shall automatically  
27 terminate and become null and void on December 31, 2005,

1 unless a bill to continue or reestablish the provisions of  
2 this section shall be passed by both houses of the Legislature  
3 and enacted into law.

4 "(f) Notwithstanding all other provisions of this  
5 article to the contrary, an existing home health agency may  
6 accept referrals of patients from outside its Medicare  
7 certified service area without obtaining a certificate of  
8 need, provided all of the following conditions are met:

9 "(1) The county of the referral is contiguous to a  
10 county for which the home health agency holds a certificate of  
11 need or an exemption granted pursuant to provisions of Section  
12 22-21-263.

13 "(2) The home health agency establishes no branch  
14 office in the county of the referral.

15 "(3) The home health agency incurs no capital  
16 expenditures in the county of the referral in excess of five  
17 hundred dollars (\$500).

18 "The home health agency shall notify the SHPDA that  
19 it has begun accepting referrals from a county contiguous to  
20 its service area within 14 days of the receipt of the first  
21 referral from the contiguous county. No notice to the SHPDA  
22 shall be required related to subsequent referrals in the same  
23 contiguous county. The SHPDA shall take steps to provide for  
24 the inclusion of statistical information relating to the  
25 service to referrals outside the Medicare certified service  
26 area in its annual statistical reports. ~~The SHPDA shall charge~~  
27 ~~the home health agency no fee for servicing referrals outside~~



1 ~~the service area.~~ The SHPDA may impose, by rule, a reasonable  
2 charge upon home health agencies accepting such referrals to  
3 cover the additional cost of gathering and processing the  
4 information.

5 "(g) Notwithstanding all other provisions of this  
6 article to the contrary, the replacement, including relocation  
7 in the same county, of an existing acute care hospital by the  
8 construction of a new digital hospital shall be exempt from  
9 certificate of need review provided the hospital meets all of  
10 the following:

11 "(1) The digital hospital design incorporates a  
12 fully automated centralized digital system to integrate all  
13 current and future medical technologies with capabilities for  
14 all systems to interface in a comprehensive medical record.  
15 The integration of medical technology shall include, but not  
16 be limited to, all patient medical records, diagnostic images,  
17 diagnostic reports, laboratory results, pharmacy data,  
18 pharmacological interactions, contraindications, surgical  
19 reports, surgical streaming video, pathology reports, unique  
20 patient identification, voice activated transcription,  
21 wireless applications, automated billing with electronic  
22 transmission capability, and electronic procurement systems.

23 "(2) The electronic medical systems shall interface  
24 on a single electronic platform to produce the most favorable  
25 patient outcome with a reduction in medical errors.

26 "(3) Medical records shall only be accessed by  
27 authorized clinical personnel who are provided access by

1 hospital consoles, physician offices, physician homes, or any  
2 remote location via unique identification requirements.

3 "(4) Patient rooms shall be designed to provide  
4 optimal electronic documentation of vital signs, real-time  
5 data entry, any and all treatment protocols, physician orders,  
6 and patient progression.

7 "(5) The digital hospital shall have a minimum  
8 project cost of one hundred million dollars (\$100,000,000) to  
9 include design, systems, property, buildings, equipment, and  
10 electronic software development.

11 "(6) The construction and design of the facility  
12 shall utilize technology and materials for patient flow to  
13 limit general public contact with patient care areas,  
14 healthcare workers, and hazardous materials to reduce the  
15 potential for cross-contamination and resulting direct medical  
16 costs.

17 "(7) The digital hospital environment shall be  
18 energy efficient, cost effective, and clinically designed to  
19 produce the most favorable environment.

20 "(8) The digital hospital shall meet all of the  
21 following conditions:

22 "a. Operate as an acute care hospital.

23 "b. Replace an existing acute care hospital located  
24 in the same county as the digital hospital.

25 "c. Be licensed for no more than the same number of  
26 hospital beds and for the same bed categories as the existing  
27 acute care hospital to be replaced by the digital hospital,

1 unless otherwise approved by the Certificate of Need Review  
2 Board through issuance of a certificate of need.

3 "d. Shall not exceed the same scope of health  
4 services, including the same amount of diagnostic or  
5 therapeutic major medical equipment, as the existing acute  
6 care hospital to be replaced by the digital hospital, unless  
7 otherwise approved by the SHPDA approval process.

8 "e. Shall not exceed the number of inpatient and  
9 outpatient surgical suites as contained in the existing acute  
10 care hospital to be replaced by the digital hospital, unless  
11 otherwise approved by the SHPDA approval process.

12 "(9) The existing acute care hospital, replaced by  
13 the digital hospital, shall be taken out of service as an  
14 acute care hospital and shall not be converted to or used as  
15 another health care facility, unless approved by the  
16 Certificate of Need Review Board through issuance of a  
17 certificate of need.

18 "(10) Any presently reviewable health service which  
19 is proposed to be offered by the digital hospital which was  
20 not offered on a regular basis within the preceding  
21 twelve-month period in or through the existing acute care  
22 hospital to be replaced by the digital hospital shall be  
23 subject to Certificate of Need Review Board approval through  
24 issuance of a certificate of need.

25 "(11) The only digital hospital exempt from  
26 certificate of need review shall be the first digital hospital  
27 developed in the state, and the digital hospital shall be

1 located in a county where there is located an accredited  
2 medical school and teaching facility and not less than 3,000  
3 licensed general hospital beds, and construction shall be  
4 commenced within one year from the issuance of a certificate  
5 of need by SHPDA.

6 "A determination whether the construction of a  
7 digital hospital is exempt from review under this subsection  
8 shall be made by the Executive Director of the SHPDA, upon the  
9 filing of an application requesting the determination, on the  
10 forms acceptable to the Executive Director of SHPDA together  
11 with an application fee as provided in Section 22-21-271. If  
12 it is determined that the replacement facility is not  
13 reviewable pursuant to this section, SHPDA shall notify the  
14 applicant in writing that the application is exempt from  
15 certificate of need review and shall issue a certificate of  
16 need. The applicant shall have a right of appeal from any  
17 adverse ruling denying exemption and the SHPDA shall  
18 promulgate rules affording an applicant a right to appeal  
19 adverse rulings pursuant to this subsection.

20 "The provisions of this subsection shall  
21 automatically terminate and become null and void upon the  
22 issuance of the first certificate of need for the construction  
23 and operation of a digital replacement hospital as herein  
24 provided or on December 31, 2005, whichever first occurs,  
25 unless a bill to continue or reestablish the provisions of  
26 this subsection shall be passed by both houses of the  
27 Legislature and enacted into law.

1           "§22-21-270.

2           "(a) A certificate of need issued under subsection  
3 (a) of Section 22-21-265 and Section 22-21-268 shall be valid  
4 for a period not to exceed 12 months and may be subject to one  
5 extension not to exceed 12 months, provided the criteria for  
6 extension as set forth in the rules and regulations of the  
7 SHPDA are met. Applications for an extension filed under this  
8 section shall be accompanied by a filing fee to be established  
9 by rule, not to exceed 25 percent of the original CON  
10 application fee. If no obligation has occurred within such  
11 period, the certificate of need shall be considered terminated  
12 and shall be null and void. Should the obligation be incurred  
13 within such valid period, the certificate of need shall be  
14 continued in effect for a period not to exceed one year or the  
15 completion of the construction project, whichever shall be  
16 later, or the inauguration of the service or the actual  
17 purchase of equipment.

18           "(b) Failure to commence the construction project  
19 within the time period stated in the construction contract or  
20 to complete the construction project within the time period  
21 specified in the construction contract, which may be extended  
22 by mutual agreement of the parties to the contract, shall  
23 render the certificate of need null and void, unless tolled or  
24 extended pursuant to statute or SHPDA rule or regulation.  
25 Provided, the SHPDA, or an administrative law judge appointed  
26 by the Governor on appeal for a fair hearing, may for causes  
27 beyond the control of the applicant, continue the certificate

1 of need in force if commencement of the construction project  
2 is delayed for a period not to exceed 60 days or if during the  
3 specified construction period the construction work should  
4 cease for not more than six months, or in the event of default  
5 in the construction contract by the contractor, or if, for any  
6 cause, the construction work has not ceased or otherwise been  
7 stopped for a period exceeding 60 consecutive days.

8 "(c) Applicants who held valid certificates of need  
9 which were terminated under this section may file a new  
10 application for a certificate pursuant to and subject to the  
11 provisions of this article.

12 "(d) Upon completion of the construction and  
13 issuance of a certificate of completion or the receipt of  
14 proof of purchase of equipment, the certificate of need shall  
15 be continued in force and effect.

16 "(e) A certificate of need shall not be  
17 transferable, assignable, or convertible, other than between  
18 members of a parent-subsidary controlled corporate group as  
19 defined in Internal Revenue Code, 26 U.S.C. §1563 (a)(1), and  
20 shall be valid solely to the person and purpose named thereon,  
21 except to such other member of the controlled group, or by  
22 change of name or merger with another corporation.

23 "(f) The transfer of stock in, or change of name or  
24 merger of, a corporation which holds a certificate of need  
25 shall not constitute a transfer, assignment, or conversion of  
26 the certificate.

27 "§22-21-271.

1           "(a) Each application for a certificate of need  
2 shall be accompanied by a fee of one percent of the estimated  
3 cost of the proposed cost of the new Institutional Health  
4 Service, or a maximum of ~~\$12,000.00~~ twelve thousand dollars  
5 (\$12,000) (indexed) per application. Provided, that the  
6 application fee shall be ~~one-half~~ three-fourths of one percent  
7 of the estimated cost of the proposed ~~cost of the~~ new  
8 Institutional Health Service, or a maximum of ~~\$4,000.00~~ eight  
9 thousand dollars (\$8,000) if the applicant has had an average  
10 daily census comprised of 50 percent or more Medicaid patients  
11 within the last year prior to the filing of the application  
12 and a maximum of ~~\$2,000.00~~ six thousand dollars (\$6,000) if a  
13 rural hospital applicant has had an average daily census  
14 comprised of 30 percent or more Medicaid/Medicare patients  
15 within the last year prior to the filing of the application.  
16 The minimum fee shall be set by the SHPDA. Fees shall be used  
17 for the purpose of defraying the lawful operating expense of  
18 the certificate of need program conducted by the SHPDA and of  
19 the Statewide Health Coordinating Council.

20           "(b) Each request for an opinion from the State  
21 Agency as to whether a project is subject to review under this  
22 article shall be accompanied by a fee to be established by the  
23 SHPDA.

24           "SHPDA, by rule approved by the Certificate of  
25 Need Review Board or the Statewide Health Coordinating  
26 Council, as applicable, may impose additional reasonable fees  
27 for any administrative filing by a health care provider for

1 which a fee is not specified in this chapter, and for any  
2 non-routine data compilation or summary. Nothing in this  
3 subsection shall authorize SHPDA to impose a fee for the  
4 initial publication of any report or statistical update which  
5 it is required to publish under law or rule.

6 "(d) In addition to all other fees, SHPDA shall  
7 impose a temporary surcharge of two thousand dollars (\$2,000)  
8 on each certificate of need application and three hundred  
9 dollars (\$300) for each reviewability determination to defray  
10 expenses incurred in developing and implementing, by January  
11 1, 2014, an online, searchable filing system for filings and  
12 orders in administrative proceedings and requests for  
13 reviewability or exemption determinations and related agency  
14 findings. The surcharge shall automatically terminate on the  
15 first day of the ninth month after certification to the CON  
16 Review Board by SHPDA's Executive Director that the online  
17 filing system has been successfully implemented.

18 "~~(c)~~(e) There is hereby authorized to be  
19 appropriated from the General Fund of the State of Alabama  
20 such amounts as may be necessary from time to time to defray  
21 the costs of administering this article over and above such  
22 fees as may be collected under this section.

23 "~~(d)~~(f) Application fees collected under this  
24 article shall not be refundable. Fees collected under this  
25 article are hereby appropriated for the purposes stated in  
26 this article.



1           "~~(e)~~ (g) All fees collected under this article shall  
2 be retained in a separate fund for the purpose of enforcing  
3 and administering this article, and shall be disbursed as  
4 other funds of the state are disbursed.

5           "§22-21-275.

6           "The SHPDA, pursuant to the provisions of Section  
7 22-21-274, shall prescribe by rules and regulations the  
8 procedures for review of applications for certificates of need  
9 and for issuance of certificates of need. Rules and  
10 regulations governing review procedures shall include, but not  
11 necessarily be limited to, the following:

12           "(1) Agreement with other review agencies for review  
13 procedures consistent with this article and federal  
14 regulations.

15           "(2) Application procedures and forms of the  
16 application necessary to elicit and provide all necessary  
17 information as required by the review criteria.

18           "(3) Establishment of a project review period of 90  
19 days from the date the state agency determines that the  
20 application is complete and notification thereof is made to  
21 the applicant. The rules and regulations may provide for a  
22 period of not more than 15 days for determination of the  
23 completeness of the application, notification of the beginning  
24 and termination dates of the project review period and  
25 criteria for determining by the state agency of an extension  
26 of the project review period not to exceed 30 days with or  
27 without the consent of the applicant. An extension of the

1 review period without limitation may be made with the written  
2 consent of the applicant or shall occur automatically without  
3 the consent of the applicant or the time period necessary to  
4 accommodate referral to an administrative law judge under this  
5 chapter and the issuance of a recommended order. All reviews  
6 must be completed prior to the termination of the review  
7 period. If the state agency does not make a decision within  
8 the period of time specified for state agency review, the  
9 proposal shall be deemed to have been found not to be needed.

10 "(4) Provision for a "nonsubstantive" review which  
11 shall be a modified review applicable to proposals for capital  
12 expenditures up to \$500,000.00 and which:

13 "a. Do not result in a substantial change in a  
14 service; or

15 "b. Propose equipment to upgrade or expand an  
16 existing service; or

17 "c. Increase the bed capacity by not more than 10  
18 percent of the existing bed capacity; provided, that such  
19 increase in bed capacity is consistent with the State Health  
20 Plan.

21 "(5) Public notification of receipt of application,  
22 review periods, public hearings, decisions of the state  
23 agency, fair hearings if requested and final decisions  
24 regarding a certificate of need.

25 "(6) Provisions and procedures for public hearings  
26 in the course of agency review on any application for the  
27 certificate of need for new institutional health service which

1 requires substantive review. The SHPDA shall make provisions  
2 for a public hearing of any contested case before an  
3 administrative law judge designated by the Governor, which  
4 shall be conducted as a contested hearing pursuant to the  
5 requirements of the Alabama Administrative Procedure Act,  
6 Chapter 22 of Title 41, and regulations consistent therewith  
7 adopted under this article. The fee for the administrative law  
8 judge shall be based on an hourly rate approved by the  
9 Executive Director of SHPDA on an annual basis and shall be  
10 apportioned, on a pro rata basis, between all parties to the  
11 contested case hearing, with each party paying its pro rata  
12 amount within 30 days of receipt of an itemized invoice from  
13 the administrative law judge. Unless extended by agreement of  
14 all parties: a. Any public hearing before an administrative  
15 law judge pursuant to this article shall begin within 45 days  
16 of assignment to the administrative law judge and completed  
17 within 90 days; and b. The administrative law judge shall  
18 render proposed findings of fact and conclusions of law in  
19 accordance with the Administrative Procedure Act within 30  
20 days of completion of the transcript. SHPDA shall make  
21 provisions that if neither the applicant nor aggrieved party  
22 shall have requested the application be heard before an  
23 administrative law judge, the application shall be heard  
24 before SHPDA at a public hearing. Any aggrieved party to a  
25 final decision of SHPDA may appeal the final decision of SHPDA  
26 to ~~the circuit court in the county in which the applicant~~  
27 ~~resides or of the county in which the applicant is situated or~~

1 ~~in which the new institutional health service being applied~~  
2 ~~for is located~~ the Court of Civil Appeals. An appeal shall be  
3 perfected by filing a written notice of appeal with the clerk  
4 of the Court of Civil Appeals within 21 days after the  
5 decision of the agency becomes final. The notice of appeal  
6 shall be on a form prescribed by the Alabama Rules of  
7 Appellate Procedure. The Court of Civil Appeals shall have no  
8 discretion to refuse to hear appeals of the final decisions of  
9 SHPDA timely filed under this article. Within 30 days after a  
10 notice of appeal is filed, SHPDA shall transmit the  
11 administrative record to the clerk, with the appealing party  
12 bearing the costs associated with the preparation and  
13 transmission of the record and transcript of the hearing and  
14 of giving notice to the parties of the transmittal. Upon the  
15 transmittal of the administrative record to the Court of Civil  
16 Appeals, the appeal shall proceed in accordance with the  
17 Alabama Rules of Appellate Procedure.

18 "(7) Schedule for reviews to include hearings before  
19 the state agency, beginning and ending of review periods and  
20 time of the review period as provided in this section.

21 "(8) Provision of the applicant to submit such  
22 information that he may deem advisable in justification of the  
23 application over and above the minimum information required by  
24 this article and the regulations adopted hereunder.

25 "(9) Provisions for periodic reports by the health  
26 provider or applicant respecting the development of the

1 proposal subject to review and for which a certificate of need  
2 is issued.

3 "(10) Provisions for written findings, as  
4 appropriate, which the state used as the basis for its  
5 decision or any recommendation of the state agency. Such  
6 findings and recommendations shall be provided to the  
7 applicant and available to other interested persons upon  
8 request and upon payment of a reasonable fee to cover actual  
9 costs of reproduction and handling.

10 "(11) Notification upon request of providers of  
11 health services and other persons subject to review of  
12 findings, recommendations and decisions made under this  
13 article.

14 "(12) Provision for a public hearing upon written  
15 request for the reconsideration of a decision by the SHPDA and  
16 for good cause by any aggrieved party, including any competing  
17 applicant, or any aggrieved person who has intervened pursuant  
18 to Section 41-22-14. Request for reconsideration shall be made  
19 in writing not more than 15 days subsequent to the date the  
20 agency (SHPDA) decision is deemed final and shall have the  
21 effect of holding in abeyance the final decision and  
22 suspending any certificate of need issued pursuant thereto,  
23 subject to the outcome of the public hearing. The provision  
24 shall state that there can be no reconsideration by the SHPDA  
25 of a decision on a prior request for reconsideration; that an  
26 aggrieved party shall not be required to request  
27 reconsideration prior to or as a condition to requesting a

1 fair hearing; and that an aggrieved party shall not be  
2 required to request reconsideration or a fair hearing prior to  
3 or as a condition to seeking judicial review pursuant to  
4 Section 41-22-20.

5 "(13) Provision that no decision of the SHPDA under  
6 this article shall be deemed final until 15 days following the  
7 date of the decision.

8 "(14) Provisions that any adverse decision of the  
9 agency (SHPDA) (other than a SHPDA decision after first being  
10 heard as a contested case before an administrative law judge  
11 pursuant to the requirements of the Alabama Administrative  
12 Procedure Act) may be appealed to an administrative law judge  
13 designated by the Governor for fair hearing which appeal shall  
14 be heard de novo as a contested case in accordance with  
15 Sections 41-22-12 and 41-22-13. The fair hearing appeal  
16 proceedings shall be conducted pursuant to the requirements of  
17 the Alabama Administrative Procedure Act, Chapter 22 of Title  
18 41, and regulations consistent therewith adopted under this  
19 article. The fee for the administrative law judge shall be  
20 based on a standard hourly rate approved by the Executive  
21 Director of SHPDA and shall be apportioned, on a pro rata  
22 basis, between all parties to the hearing, with each party  
23 paying its pro rata amount within 30 days of receipt of an  
24 itemized invoice from the administrative law judge. Unless  
25 extended by agreement of all parties: a. Any public hearing  
26 before an administrative law judge pursuant to this article  
27 shall begin within 45 days of assignment to the administrative

1 law judge and completed within 90 days; and b. The  
2 administrative law judge shall issue an order within 30 days  
3 of completion of the transcript. The appeal shall be commenced  
4 by a request for a fair hearing by the applicant or any  
5 competing applicant, which request shall be made within 15  
6 days of the date that the decision by the state agency became  
7 final, or in the event of a request for reconsideration,  
8 within 15 days of the date that the decision of the state  
9 agency on reconsideration became final and shall have the  
10 effect of holding in abeyance the decision and suspending any  
11 certificate of need issued pursuant thereto subject to the  
12 outcome of the fair hearing. The decision of the  
13 administrative law judge in the fair hearing proceedings shall  
14 be considered the final decision of the state agency (SHPDA);  
15 provided, that any aggrieved party may appeal the decision to  
16 ~~the circuit court of the county in which the applicant resides~~  
17 ~~or of the county in which the applicant is situated or in~~  
18 ~~which the new institutional health service being applied for~~  
19 ~~is located~~ Court of Civil Appeals in accordance with the  
20 provisions of subdivision (6).

21 "(15) Preparation and publication, at least  
22 annually, of reports by the state agency of the reviews being  
23 conducted, decisions reached, certificates issued and status  
24 of proposals.

25 "(16) Access by the general public to applications  
26 reviewed by the SHPDA and to other written material pertinent  
27 to the review.

1                   "(17) Provisions for letters of intent in the case  
2 of construction projects by persons proposing such projects.  
3 Letters of intent shall be in such detail as the SHPDA may  
4 direct by regulations. Letters of intent shall not substitute  
5 for the formal application for a certificate of need as  
6 provided in this article.

7                   "(18) Provision that the review procedure may vary  
8 according to the purpose for which a particular review is  
9 being conducted and/or the nature and type of service or  
10 expenditure proposed."

11                   Section 2. The provisions of this act amending  
12 Section 22-21-275, Code of Alabama 1975, shall apply to any  
13 application for a certificate of need which is filed after the  
14 effective date of this act.

15                   Section 3. This act shall become effective  
16 immediately following its passage and approval by the  
17 Governor, or its otherwise becoming law.



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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Health ..... 21-FEB-12

Read for the second time and placed  
on the calendar with 1 substitute  
and..... 01-MAR-12

Read for the third time and passed  
as amended..... 14-MAR-12

Yeas 90, Nays 0, Abstains 1

Greg Pappas  
Clerk