

SENATE BILL REPORT

SB 5149

As Reported by Senate Committee On:
Health Care, February 19, 2015

Title: An act relating to certificate of need appeals process.

Brief Description: Concerning certificates of need appeals process.

Sponsors: Senators Keiser, Frockt, Conway, Bailey and Parlette.

Brief History:

Committee Activity: Health Care: 2/05/15, 2/19/15 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 5149 be substituted therefor, and the substitute bill do pass.

Signed by Senators Becker, Chair; Frockt, Ranking Minority Member; Angel, Bailey, Brown, Cleveland, Conway, Jayapal, Keiser and Parlette.

Minority Report: Do not pass.

Signed by Senator Dammeier, Vice Chair.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Staff: Evan Klein (786-7483)

Background: Certificate of Need Program. The certificate of need program is a regulatory process that requires certain healthcare providers to get state approval before building certain types of facilities or offering new or expanded services. The certificate of need process is intended to help ensure that facilities and new services proposed by healthcare providers are needed for quality patient care within a particular region or community. A certificate of need from the Department of Health (DOH) is required for construction, development, or establishment of the following healthcare facilities: hospitals; nursing homes; kidney dialysis centers; Medicare or Medicaid home health agencies and hospice agencies; ambulatory surgical centers; and hospice care centers. Certificate of need review is also necessary for increases in the number of stations at a kidney dialysis center; sale, purchase, or lease of all or part of an existing hospital; increases in the number of licensed beds at a hospital, nursing home, or hospice care center; offering a tertiary health service such as

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rehabilitation programs, open heart surgery, therapeutic cardiac catheterization, organ transplantation, specialty burn services, intermediate care nursery or obstetric services, neonatal intensive care nursery or obstetric services, and specialized inpatient pediatric services; a capital expenditure made by a nursing home exceeding \$2,403,990; nursing home bed banking transactions; and nursing home replacements.

Under the program, DOH must review the project under specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. Certain facilities are exempt from the certificate of need requirement. These include certain facilities offering inpatient tertiary health services; nursing homes that are owned and operated by a continuing care retirement community; and certain hospice agencies.

Certificate of Need Hearings and Appeals. DOH must conduct a public hearing on a certificate of need application if requested, unless the review is expedited or subject to emergency review. Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding under the Administrative Procedure Act. Any health care facility or health maintenance organization that provides similar services to the applicant, is located within the applicant's service area, and testified or submitted evidence at a public hearing must be provided an opportunity to present oral or written testimony and argument in a proceeding.

Summary of Bill (Recommended Substitute): If a third party appeals a granting of a certificate of need and the appeal is denied, DOH and the certificate of need applicant or recipient may recover costs and fees from the third party appellant, including attorneys' fees and costs associated with any delays in construction.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Substitute): The prohibition of third party appeals to the granting of a certificate of need is removed, and a provision is added allowing DOH and the certificate of need applicant or recipient to receive costs and fees from the third party appellant, if the third party appeal is denied.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The certificate of need (CON) process needs simplification. CON is too lengthy and the appeals process draws the process out further. The associated costs become too high and are inevitably borne by taxpayers. The public hearing process already in place is the appropriate avenue for third parties to address concerns for CON. This bill would help decrease costs of CON and shorten the process. This will lead to savings for entities applying for a CON, including

hospice care organizations. This bill would not diminish the right to appeal a CON in superior court. This bill will allow health care services in Washington to open sooner.

CON: Taking away the CON appeals process would take away the right for an applicant to appeal the granting of a CON. This can hurt hospitals that want to limit the scope of their project from what is granted by their CON. Cost savings need to be balanced with the adjudicative process. The state should not force CON appeals into the courts, because it will cost more money and may limit the scope of appeal review. A change of this appeals process warrants a full discussion with stakeholders and DOH.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Steven Saxe, DOH; Leslie Emerick, Home Care Assn. of WA, WA St. Hospice and Palliative Care Organization; Tom Brown, Kevin Anderson, Wesley Homes; Greg Pang, Community Home Health and Hospice.

CON: Lisa Thatcher, WA State Hospital Assn.; Jody Carona, Health Facilities Planning; Jonathan Duarte, Overlake Medical Center; Gail McGaffick, Fresenius Medical Care; Emily Studebaker, WA Ambulatory Surgery Center Assn.