

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1568

SPONSOR: Senator Jones

SUBJECT: Acute Care Hospitals

DATE: March 10, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill authorizes certain acute care hospitals in high growth counties to add up to 180 additional beds without certificate-of-need (CON) review by the Agency for Health Care Administration (Agency). A project authorized under the bill would not be subject to challenge under s. 408.039, or ch. 120, F.S., and the beds authorized would be excluded from the Agency inventory used to calculate future need for additional acute care beds.

This bill amends s. 408.043, F.S.

## II. Present Situation:

The Certificate-of-Need (CON) regulatory process under chapter 408, F.S., requires that before specified health care services and facilities may be offered to the public they must be approved by the Agency. Section 408.036, F.S., specifies which health care projects are subject to review. Subsection (1) of that section lists the projects that are subject to full comparative review in batching cycles by the Agency against specified criteria. Subsection (2) lists the kinds of projects that can undergo an expedited review. These include: research, education, and training programs; shared services contracts or projects; a transfer of a certificate of need; certain increases in nursing home beds; replacement of a health care facility when the proposed project site is located in the same district and within a 1-mile radius of the replaced facility; and certain conversions of hospital mental health services beds to acute care beds. Subsection (3) lists projects that may be exempt from full comparative review upon request.

Section 408.043, F.S., includes special provisions related to the review of specific CON applications, including need for osteopathic hospitals and hospices, preferences for members of

rural health networks and a prohibition of a CON requirement that an applicant be privately accredited.

Currently, a proposal to add hospital beds is subject to full comparative CON review unless the proposal meets criteria for either of two exemptions specified in s. 408.036, F.S. Under s. 408.036(3)(n), F.S., an exemption may be granted for the addition of acute care beds in a number that may not exceed 10 total beds or 10 percent of the hospital's current licensed capacity of acute care beds, provided the most recent 12-month occupancy has been at least 80 percent. Under s. 408.036(3)(o), F.S., an exemption may be granted for the addition of acute care beds in a number that may not exceed 10 total beds or 10 percent of the hospital's current licensed capacity of acute care beds, in a hospital that has experienced high seasonal occupancy within the prior 12-month period or in a hospital that must respond to emergency circumstances.

Under s. 408.039, F.S., the CON review process affords parties that could be substantially affected by the granting of a CON the right to request an administrative hearing. Parties to an administrative hearing have the right to seek judicial review by the District Court of Appeal. Only applicants in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of a certificate of need to a competing proposed facility or program within the same district.

Under the Administrative Procedure Act, ch. 120, F.S., the opportunity for a hearing must be afforded when the substantial interests of a party will be determined by an agency. The law defines "party" to mean: specifically named persons whose substantial interests are being determined in the proceeding; any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by agency action.

As part of its responsibility to determine the future need for any additional acute care hospital beds, the Agency maintains inventories of all currently licensed hospital beds and any additional beds that have received approval. A total future bed need is calculated first; the existing licensed and approved beds are then subtracted from the total; and the result would be any additional beds needed beyond those already existing or approved.

### **Florida's Population**

Florida's population increased by 23.2 percent during the decade 1991-2001. Certain counties experienced particularly high growth, with four counties - Collier, Flagler, Sumter, and Wakulla - seeing a greater than 60 percent increase in population during the decade.

### **III. Effect of Proposed Changes:**

This bill adds a new subsection (5) to s. 408.043, F.S., relating to special CON provisions, to authorize certain acute care hospitals in high growth counties to add up to 180 additional beds without CON review by the Agency. To be eligible, a hospital must be the sole acute care hospital in the county and be the only acute care hospital within a 10-mile radius of another hospital. A high growth county is one that has experienced at least a 60 percent growth rate for

the most recent 10-year period for which data are available as determined by using the most recent edition of the Florida Statistical Abstract. The hospital must provide written notice to the Agency that it qualifies under the subsection prior to the addition of the beds.

Two of the four high-growth counties have a hospital with no other hospital within 10 miles of the eligible hospital. The two hospitals that would qualify for the bed addition allowable under the provisions of the bill are a 60-bed facility located in Sumter County, and an 81-bed facility located in Flagler County.

The project will not be subject to challenge under s. 408.039, or chapter 120, F.S.

Acute care beds added under this special provision will not be included in the inventory of hospital beds used by the Agency in calculating the fixed-bed-need pool for acute care hospitals under the CON program. Exclusion of beds added or authorized under this bill would increase the size of any calculated need for additional acute care beds in the subdistrict where a hospital has taken advantage of the bill's provisions.

The bill takes effect July 1, 2003.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

Hospitals subject to this special provision would be able to add 180 beds without incurring the CON fee.

##### **B. Private Sector Impact:**

Hospitals that met the requirements of the bill could add 180 additional beds without incurring the cost of applying for, and defending against challenges to, a CON.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The number of hospitals potentially eligible for the bed addition could be difficult to determine because the phrase “only acute care hospital within a 10-mile radius of another hospital” means literally, that the center of the 10-mile radius is “another hospital.” It would be clearer if the bill said: “no other hospital is within 10 miles of the eligible hospital.”

As is the case with exemption requests, the bill requires the hospital applicant to notify the Agency that it is eligible for the bed addition prior to actually adding beds. It is not clear whether the Agency may disagree about the eligibility.

Although the scope of the bill is limited to acute care hospitals, the bill does not specifically state that all of the 180 beds added must be acute care beds. Since acute care hospitals may also contain specialty beds, the legislative intent should be clarified.

The bill does not establish any timeframes for the addition of beds, raising the possibility of a long series of incremental bed additions over many years, each proceeding “notwithstanding any other provisions of law.” The legislative intent should be clarified here also.

**VIII. Amendments:**

None.