

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-129
SENATE BILL 462

AN ACT AMENDING CERTIFICATE OF NEED LAWS TO EXPAND ACCESS AND
LOWER COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-176 reads as rewritten:

"§ 131E-176. Definitions.

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

...

(7a) "Diagnostic center" means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds ~~five hundred thousand dollars (\$500,000).~~ one million five hundred thousand dollars (\$1,500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than ~~five hundred thousand dollars (\$500,000),~~ one million five hundred thousand dollars (\$1,500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Beginning September 30, 2022, and on September 30 each year thereafter, the cost threshold amount in this subdivision shall be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the 12-month period preceding the previous September 1.

...

(14o) "Major medical equipment" means a single unit or single system of components with related functions which is used to provide medical and other health services and which costs more than ~~seven hundred fifty thousand dollars (\$750,000).~~ two million dollars (\$2,000,000). In determining whether the major medical equipment costs more than ~~seven hundred fifty thousand dollars (\$750,000),~~ two million dollars (\$2,000,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section. Beginning September 30, 2022, and on September 30 each year



thereafter, the cost threshold amount in this subdivision shall be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the 12-month period preceding the previous September 1.

...

(16) "New institutional health services" means any of the following:

...

b. Except as otherwise provided in G.S. 131E-184(e), the obligation by any person of a capital expenditure exceeding ~~two~~four million dollars ~~(\$2,000,000)-(\$4,000,000)~~ to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds ~~two~~four million dollars ~~(\$2,000,000)-(\$4,000,000)~~. Beginning September 30, 2022, and on September 30 each year thereafter, the amount in this sub-subdivision shall be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the 12-month period preceding the previous September 1.

...."

SECTION 2. G.S. 131E-189 is amended by adding the following new subsections to read:

"(d) Notwithstanding subsections (a), (b), or (c) of this section, a certificate of need issued by the Department for the construction of a health service facility on or after October 1, 2021, expires if the holder of the certificate of need fails to execute or commit to a contract for design services for the project authorized by the certificate of need within the following time frames:

- (1) For a project that costs over fifty million dollars (\$50,000,000), the holder of the certificate of need shall execute or commit to a contract for design services for the project authorized by the certificate of need within four years after the date the Department's decision to approve the certificate of need for that project becomes final.
- (2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder of the certificate of need shall execute or commit to a contract for design services for the project authorized by the certificate of need within two years after the date the Department's decision to approve the certificate of need for that project becomes final.

(e) Notwithstanding subsections (a), (b), or (c) of this section, a certificate of need issued by the Department for the construction of a health service facility prior to October 1, 2021, expires if the holder of the certificate of need fails to execute or commit to a contract for design services for the project authorized by the certificate of need within the following time frames:

- (1) For a project that costs over fifty million dollars (\$50,000,000), the holder of the certificate of need shall execute or commit to a contract for design services for the project authorized by the certificate of need by October 1, 2025.
- (2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder of the certificate of need shall execute or commit to a contract for design services for the project authorized by the certificate of need by October 1, 2023.

(f) Notwithstanding subsections (d) and (e) of this section, certificates of need that (i) are issued for the construction of a health service facility prior to October 1, 2021, and (ii) have a specific deadline to execute or commit to a contract for design services for the project authorized by the certificate of need will not expire unless the holder fails to execute or commit to a contract for design services by the deadline specified in the certificate of need.

(g) In the event the holder of a certificate of need is unable to execute or commit to a contract for design services for the project due to developments beyond the control of the holder of the certificate of need or for other good cause, the time for performance shall be extended by a period equal to the period during which performance of the obligation has been delayed or failed to be performed."

SECTION 3. If any part of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 4. Sections 1 and 2 become effective October 1, 2021. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:51 a.m. this 30th day of August, 2021