



CHAPTER 131E

ARTICLE 9 - CERTIFICATE OF NEED

N.C.G.S. § 131E-188.

Administrative and judicial review.

SOURCE	LAST AMENDMENT IN THIS TEXT	RETRIEVED	SOURCE FINGERPRINT
General Statutes of North Carolina, as published by the General Assembly	S.L. 2011-398, s. 46 — fourteenth act in the lineage	21 September 2026, 04:25 UTC	73a5d8e732e6b62b9e807ae7 - e79b7702a7d9d273b3222cee - 5be9244c2f1cec31

§ 131E-188(a)

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

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

- (1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.
- (2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.
- (3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.
- (4) The administrative law judge or hearing officer shall make a final decision within 75 days after the hearing.
- (5) Repealed by Session Laws 2011-398, s. 46, as amended by Session Laws 2011-326, s. 23, effective January 1, 2012, and applicable to contested cases commenced on or after that date.

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes a final decision in the case within 270 days after the petition is filed.

§ 131E-188(a1)

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

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

§ 131E-188(b)

Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision shall be taken within 30 days of the receipt of the written notice of final decision, and notice of appeal shall be filed with the Office of Administrative Hearings and served on the Department and all other affected persons who were parties to the contested hearing.

§ 131E-188(b1)

Before filing an appeal of a final decision granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals. The bond requirements of this subsection shall not apply to any appeal filed by the Department.

- (1) The bond shall be secured by cash or its equivalent in an amount equal to five percent (5%) of the cost of the proposed new institutional health service that is the subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000); provided that the applicant who received approval of the certificate of need may petition the Court of Appeals for a higher bond amount for the payment of such costs and damages as may be awarded pursuant to subdivision (2) of this subsection. This amount shall be determined by the Court in its discretion, not to exceed three hundred thousand dollars (\$300,000). A holder of a certificate of need who is appealing only a condition in the certificate is not required to file a bond under this subsection.
- (2) If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals. If the Court of Appeals does not find that the appeal was frivolous or filed to delay the applicant and does not remand the case to superior court for a possible award of all or part of the bond to the holder of the certificate of need, the person originally filing the bond shall be entitled to a return of the bond.

§ 131E-188(c)

The term "affected persons" includes: the applicant; any individual residing within the service area or the geographic area served or to be served by the applicant; any individual who regularly uses health service facilities within that geographic area or the service area; any person who provides services, similar to the services under review, to individuals residing within the service area or the geographic area proposed to be served by the applicant; any person who, prior to receipt by the agency of the proposal being reviewed, has provided written notice to the agency of an intention to provide similar services in the future to individuals residing within the service area or the geographic area to be served by the applicant; third party payers who reimburse health service facilities for services in the service area in which the project is proposed to be located; and any agency which establishes rates for health service facilities or HMOs located in the service area in which the project is proposed to be located.

APPARATUS I

14 ACTS

Amendment lineage

The State prints this history as a single parenthetical at the foot of the section. It is reproduced verbatim in the colophon and unpacked below in order of enactment.



Nº	YEAR	ACT	CHARACTER
01	1977	2nd Sess., c. 1182, s. 2	ENACTED
02	1981	c. 651, s. 11	AMENDED
03	1983	c. 775, s. 1	AMENDED
04	1983	1983 (Reg. Sess., 1984), c. 1000, s. 1	AMENDED
05	1987	c. 511, s. 1	AMENDED
06	1991	c. 692, s. 8	AMENDED
07	1991	c. 701, s. 3	AMENDED
08	1993	c. 7, s. 9	AMENDED
09	1997	S.L. 1997-443, s. 11A.118(a)	AMENDED
10	2005	S.L. 2005-325, s. 5	AMENDED
11	2007	S.L. 2007-182, s. 1	AMENDED
12	2009	S.L. 2009-373, s. 2	AMENDED
13	2011	S.L. 2011-326, s. 23	AMENDED
14	2011	S.L. 2011-398, s. 46	AMENDED

APPARATUS II

1 AUTHORITY

Authorities referenced

Every G.S. cross-reference appearing in the text of this section, in order of first appearance. Nothing is characterized; the operative language is quoted from the section itself.

REFERENCE	APPEARS IN	OPERATIVE LANGUAGE IN THIS SECTION
G.S. 7A-29(a)	(b)	"Court of Appeals as provided in"

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 131E-188 (2011).

PINPOINT

N.C. Gen. Stat. § 131E-188(a) (2011).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

COLOPHON

Provenance

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This is not the official text. The official text is published by the General Assembly of North Carolina.

HISTORY PARENTHETICAL, AS PRINTED BY THE STATE

(1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 11; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1000, s. 1; 1987, c. 511, s. 1; 1991, c. 692, s. 8; c. 701, s. 3; 1993, c. 7, s. 9; 1997-443, s. 11A.118(a); 2005-325, s. 5; 2007-182, s. 1; 2009-373, s. 2; 2011-326, s. 23; 2011-398, s. 46.)

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