

1 HB229  
2 126546-2  
3 By Representative Johnson (R)  
4 RFD: Health  
5 First Read: 10-MAR-11

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8 SYNOPSIS: Under existing law, contested cases relating  
9 to certificates of need are heard by hearing  
10 officers appointed by the Governor.

11 This bill would authorize the State Health  
12 Planning and Development Agency to employ attorneys  
13 as full-time administrative law judges to hear  
14 contested cases coming before the agency.

15 The bill would further provide procedures  
16 for the conduct of contested cases before the  
17 agency.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
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23 To amend Section 22-21-275, Code of Alabama 1975, to  
24 authorize the State Health Planning and Development Agency to  
25 employ administrative law judges to conduct contested cases  
26 coming before the agency for review; to provide funding; and

1 to provide procedures relating to the conduct of contested  
2 cases heard by administrative law judges.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 22-21-275, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§22-21-275.

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

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

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

19 "(3) Establishment of a project review period of 90  
20 days from the date the state agency determines that the  
21 application is complete and notification thereof is made to  
22 the applicant. The rules and regulations may provide for a  
23 period of not more than 15 days for determination of the  
24 completeness of the application, notification of the beginning  
25 and termination dates of the project review period and  
26 criteria for determining by the state agency of an extension  
27 of the project review period not to exceed 30 days with or

1 without the consent of the applicant. An extension of the  
2 review period without limitation may be made with the written  
3 consent of the applicant. All reviews must be completed prior  
4 to the termination of the review period. If the state agency  
5 does not make a decision within the period of time specified  
6 for state agency review, the proposal shall be deemed to have  
7 been found not to be needed.

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

11 "a. Do not result in a substantial change in a  
12 service; or

13 "b. Propose equipment to upgrade or expand an  
14 existing service; or

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

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

23 "(6) Provisions and procedures for public hearings  
24 in the course of agency review on any application for the  
25 certificate of need for new institutional health service which  
26 requires substantive review. The SHPDA shall make provisions  
27 for a public hearing of any contested case before an

1 administrative law judge ~~designated by the Governor~~, which  
2 shall be conducted as a contested hearing pursuant to the  
3 requirements of the Alabama Administrative Procedure Act,  
4 Chapter 22 of Title 41, and regulations consistent therewith  
5 adopted under this article. SHPDA shall make provisions that  
6 if neither the applicant nor aggrieved party shall have  
7 requested the application be heard before an administrative  
8 law judge, the application shall be heard before SHPDA at a  
9 public hearing. Any aggrieved party to a final decision of  
10 SHPDA may appeal the final decision of SHPDA to the circuit  
11 court in the county in which the applicant resides or of the  
12 county in which the applicant is situated or in which the new  
13 institutional health service being applied for is located.

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

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

21 "(9) Provisions for periodic reports by the health  
22 provider or applicant respecting the development of the  
23 proposal subject to review and for which a certificate of need  
24 is issued.

25 "(10) Provisions for written findings, as  
26 appropriate, which the state used as the basis for its  
27 decision or any recommendation of the state agency. Such

1 findings and recommendations shall be provided to the  
2 applicant and available to other interested persons upon  
3 request and upon payment of a reasonable fee to cover actual  
4 costs of reproduction and handling.

5 "(11) Notification upon request of providers of  
6 health services and other persons subject to review of  
7 findings, recommendations and decisions made under this  
8 article.

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

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

4           "(14) Provisions that any adverse decision of the  
5 agency (SHPDA) (other than a SHPDA decision after first being  
6 heard as a contested case before an administrative law judge  
7 pursuant to the requirements of the Alabama Administrative  
8 Procedure Act) may be appealed to an administrative law judge  
9 ~~designated by the Governor~~ for fair hearing which appeal shall  
10 be heard de novo as a contested case in accordance with  
11 Sections 41-22-12 and 41-22-13. The fair hearing appeal  
12 proceedings shall be conducted pursuant to the requirements of  
13 the Alabama Administrative Procedure Act, Chapter 22 of Title  
14 41, and regulations consistent therewith adopted under this  
15 article. The appeal shall be commenced by a request for a fair  
16 hearing by the applicant or any competing applicant, which  
17 request shall be made within 15 days of the date that the  
18 decision by the state agency became final, or in the event of  
19 a request for reconsideration, within 15 days of the date that  
20 the decision of the state agency on reconsideration became  
21 final and shall have the effect of holding in abeyance the  
22 decision and suspending any certificate of need issued  
23 pursuant thereto subject to the outcome of the fair hearing.  
24 The decision of the administrative law judge in the fair  
25 hearing proceedings shall be considered the final decision of  
26 the state agency (SHPDA); provided, that any aggrieved party  
27 may appeal the decision to the circuit court of the county in

1 which the applicant resides or of the county in which the  
2 applicant is situated or in which the new institutional health  
3 service being applied for is located.

4 "(15) Preparation and publication, at least  
5 annually, of reports by the state agency of the reviews being  
6 conducted, decisions reached, certificates issued and status  
7 of proposals.

8 "(16) Access by the general public to applications  
9 reviewed by the SHPDA and to other written material pertinent  
10 to the review.

11 "(17) Provisions for letters of intent in the case  
12 of construction projects by persons proposing such projects.  
13 Letters of intent shall be in such detail as the SHPDA may  
14 direct by regulations. Letters of intent shall not substitute  
15 for the formal application for a certificate of need as  
16 provided in this article.

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

21 "(b) (1) The SHPDA may employ attorneys as  
22 administrative law judges to hear contested cases coming  
23 before the agency. The administrative law judges shall be  
24 full-time employees of the agency under the state Merit  
25 System. A person employed as an administrative law judge by  
26 SHPDA shall devote his or her full time to the duties as an  
27 administrative law judge. Persons employed as administrative



1 law judges shall receive compensation as determined by the  
2 State Personnel Board. In order to be eligible for employment  
3 as an administrative law judge, a person shall be a member of  
4 the Alabama State Bar in good standing and shall have been a  
5 member for not less than 10 years and have at least five years  
6 experience in health care law. The employment of attorneys  
7 pursuant to this subdivision shall not affect SHPDA's ability  
8 to contract with attorneys, other than to act as  
9 administrative law judges, with specialized knowledge within  
10 the field of law governing SHPDA's activities.

11 "(2) Contested cases shall be assigned to an  
12 administrative law judge within 60 days of a request for a  
13 hearing. All contested cases assigned to an administrative law  
14 judge, whether employed by SHPDA or by contract with SHPDA,  
15 shall begin proceedings within 30 days after assignment. The  
16 hearing shall be completed within 90 days after commencement,  
17 and the administrative law judge shall issue a recommended  
18 order within 45 days after completion of the hearing  
19 transcript, unless otherwise agreed to by all the parties. The  
20 Rules of Professional Conduct applicable to lawyers and the  
21 Canons of Judicial Ethics shall apply to any administrative  
22 law judges employed under this subsection. An administrative  
23 law judge may summon witnesses, may require testimony, and may  
24 require the production of books, documents, records, papers,  
25 or other tangible things at any hearing before the office,  
26 upon any matter within its jurisdiction throughout the state.  
27 Witnesses may be summoned by any party to a proceeding in the

1 same manner, be paid the same fees, and be subject to the same  
2 penalties as witnesses in civil cases before any circuit court  
3 in this state. An administrative law judge may issue orders of  
4 discovery pursuant to the Alabama Rules of Civil Procedure. If  
5 SHPDA is unable to assign a full-time administrative law judge  
6 within the time period required by this subsection, the  
7 executive director of SHPDA shall appoint in writing an  
8 individual who meets the qualifications for an administrative  
9 law judge in proceedings before the agency. An attorney in  
10 private practice appointed to act as an administrative law  
11 judge shall be required to be a member of the Alabama State  
12 Bar in good standing for at least 10 years and have at least  
13 five years of experience in the health law field. The SHPDA  
14 shall charge the parties in a contested case for the costs of  
15 providing an administrative law judge for a contested case  
16 hearing as provided by rule of the SHPDA. The SHPDA shall  
17 develop rules pursuant to the Alabama Administrative Procedure  
18 Act necessary to implement this subdivision."

19           Section 2. This act shall become effective on  
20 October 1, 2011, following its passage and approval by the  
21 Governor, or its otherwise becoming law.