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HOUSE BILL NO. 730

Offered January 21, 2000

A *BILL to amend and reenact § 32.1-102.11 of the Code of Virginia, relating to certificate of public need.*

Patrons—Griffith; Senator: Trumbo

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.11 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-102.11. Application of article.

A. On and after July 1, 1992, every project of an existing or proposed medical care facility, as defined in § 32.1-102.1, shall be subject to all provisions of this article unless, with respect to such project, the owner or operator of an existing medical care facility or the developer of a proposed medical care facility (i) has, by February 1, 1992, purchased or leased equipment subject to registration pursuant to former § 32.1-102.3:4; (ii) has, by February 1, 1992, initiated construction requiring a capital expenditure exceeding one million dollars; or (iii) has made or contracted to make or otherwise legally obligated to make, during the three years ending February 1, 1992, preliminary expenditures of \$350,000 or more for a formal plan of construction of the specific project, including expenditures for site acquisition, designs, preliminary or working drawings, construction documents, or other items essential to the construction of the specific project; *or (iv) had an application pending as of January 1, 1999, for a certificate to construct an ambulatory surgery center in a city of 14 square miles having a population of more than 22,000 and less than 24,000, which was withdrawn on or before June 30, 1999.*

Any project exempted pursuant to subdivisions (ii) and (iii) of this subsection shall be limited to such construction, services, and equipment as specifically identified in the formal plan of construction which shall have existed and been formally committed to by February 1, 1992. Further, the equipment to be exempted pursuant to subdivisions (ii) and (iii) shall be limited to the number of units and any types of medical equipment, in the case of medical equipment intended to provide any services included in subdivision 6 of the definition of project in § 32.1-102.1, as are specifically identified in such plan and, in the case of all other equipment, such equipment as is appropriate for the construction and services included in such plan.

~~None~~ *With the exception of the provisions of subdivision (iv), none* of the exemptions provided in this subsection shall be applicable to projects which required a certificate of public need pursuant to this article on January 1, 1992.

B. Any medical care facility or entity claiming to meet one of the conditions set forth in subsection A of this section shall file a completed application for an exemption from the provisions of this article with the Commissioner by ~~August 1, 1992~~ *October 1, 2000*. Forms for such application shall be made available by the Commissioner no later than ~~April 1, 1992~~ *August 1, 2000*. The Commissioner may deny an exemption if the application is not complete on ~~August 1, 1992~~ *October 1, 2000*, and the medical care facility or entity has not filed a completed application within forty-five days after notice of deficiency in the filing of the completed application. After receiving a completed application, the Commissioner shall determine whether the project has met one of the criteria for an exemption and is, therefore, exempt or has not met any of the criteria for an exemption and is, therefore, subject to all provisions of this article and shall notify the medical care facility or entity of his determination within sixty days of the date of filing of the completed application. If it is determined that an exemption exists for only a portion of a project, the Commissioner may approve an exemption for that portion and any appeal may be limited to the part of the decision with which the appellant disagrees without affecting the remainder of the decision. The Commissioner's determination shall be made in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), except that parties to the case shall include only those parties specified in § 32.1-102.6.

C. For the purposes of this section:

"Formal plan of construction" means documentary evidence indicating that the facility, the owner or operator of the facility, or the developer of a proposed facility was formally committed to the project by February 1, 1992, and describing the specific project in sufficient detail to reasonably define and confirm the scope of the project including estimated cost, intended location, any clinical health services to be involved and any types of equipment to be purchased. Such documentary evidence shall include designs, preliminary or working drawings, construction documents or other documents which have been

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60 used to explicitly define and confirm the scope of the project for the purposes of seeking architectural or
61 construction plans or capital to the extent that such capital was committed or agreed to be provided for
62 such project prior to February 1, 1992.

63 "Initiated construction" means an owner or operator of an existing facility or the developer of a
64 proposed facility can present evidence for a specific project that (i) a construction contract has been
65 executed; (ii) if applicable, short-term financing has been completed; (iii) if applicable, a commitment
66 for long-term financing has been obtained; and (iv) if the project is for construction of a new facility or
67 expansion of an existing facility, predevelopment site work and building foundations have been
68 completed.

69 "Leased" means that the owner or operator of an existing medical care facility or the developer of a
70 proposed facility has a legally binding commitment to lease the equipment pursuant to an agreement
71 providing for fixed, periodic payments commencing no later than June 30, 1992, including a
72 lease-purchase agreement in which the owner or operator of the facility or developer has an option to
73 purchase the equipment for less than fair market value upon conclusion of the lease or an installment
74 sale agreement with fixed periodic payments commencing no later than June 30, 1992.

75 "Purchased" means that the equipment has been acquired by the owner or operator of an existing
76 medical care facility or the developer of a proposed medical care facility, or the owner or operator of
77 the facility or the developer can present evidence of a legal obligation to acquire the equipment in the
78 form of an executed contract or appropriately signed order or requisition and payment has been made in
79 full by June 30, 1992.