



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2425

Introduced 1/18/2006, by Sen. Susan Garrett

#### SYNOPSIS AS INTRODUCED:

20 ILCS 3960/4	from Ch. 111 1/2, par. 1154
20 ILCS 3960/4.2	
20 ILCS 3960/5	from Ch. 111 1/2, par. 1155
20 ILCS 3960/19.6	

Amends the Illinois Health Facilities Planning Act. Requires a State Board member of the Health Facilities Planning Board to disqualify himself or herself from the consideration of any application for a permit or exemption in which the State Board member or the State Board member's spouse, parent, or child is employed by, serves as a consultant for, or is a member of the governing board of a person that the member knows, or upon reasonable inquiry should know, has an interest or seeks an interest with respect to the planning, financing, construction, or management of the matter for which a permit or exemption is sought. In a Section defining ex parte communications of State Board members, provides that statements publicly made in a meeting open to the public are not considered ex parte communications. Provides that construction or modification of a health care facility for (i) the establishment of swing beds authorized under Title XVIII of the federal Social Security Act or (ii) certain changes in bed capacity at a health care facility that increase the total number of beds by more than 20 beds (now, 10 beds) or more than 10% of the total bed capacity does not require a permit or exemption by the State Board. Provides that the Act is repealed on July 1, 2011 (now, repealed July 1, 2006). Effective immediately.

LRB094 16766 RSP 52037 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Health Facilities Planning Act is  
5 amended by changing Sections 4, 4.2, 5, and 19.6 as follows:

6 (20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)

7 (Section scheduled to be repealed on July 1, 2006)

8 Sec. 4. Health Facilities Planning Board; membership;  
9 appointment; term; compensation; quorum. There is created the  
10 Health Facilities Planning Board, which shall perform the  
11 functions described in this Act.

12 The State Board shall consist of 5 voting members. Each  
13 member shall have a reasonable knowledge of health planning,  
14 health finance, or health care at the time of his or her  
15 appointment. No person shall be appointed or continue to serve  
16 as a member of the State Board who is, or whose spouse, parent,  
17 or child is, a member of the Board of Directors of, has a  
18 financial interest in, or has a business relationship with a  
19 health care facility.

20 Notwithstanding any provision of this Section to the  
21 contrary, the term of office of each member of the State Board  
22 is abolished on the effective date of this amendatory Act of  
23 the 93rd General Assembly and those members no longer hold  
24 office.

25 The State Board shall be appointed by the Governor, with  
26 the advice and consent of the Senate. Not more than 3 of the  
27 appointments shall be of the same political party at the time  
28 of the appointment. No person shall be appointed as a State  
29 Board member if that person has served, after the effective  
30 date of Public Act 93-41, 2 3-year terms as a State Board  
31 member, except for ex officio non-voting members.

32 The Secretary of Human Services, the Director of Healthcare

1 and Family Services ~~Public Aid~~, and the Director of Public  
2 Health, or their designated representatives, shall serve as  
3 ex-officio, non-voting members of the State Board.

4 Of those members initially appointed by the Governor under  
5 this amendatory Act of the 93rd General Assembly, 2 shall serve  
6 for terms expiring July 1, 2005, 2 shall serve for terms  
7 expiring July 1, 2006, and 1 shall serve for a term expiring  
8 July 1, 2007. Thereafter, each appointed member shall hold  
9 office for a term of 3 years, provided that any member  
10 appointed to fill a vacancy occurring prior to the expiration  
11 of the term for which his or her predecessor was appointed  
12 shall be appointed for the remainder of such term and the term  
13 of office of each successor shall commence on July 1 of the  
14 year in which his predecessor's term expires. Each member  
15 appointed after the effective date of this amendatory Act of  
16 the 93rd General Assembly shall hold office until his or her  
17 successor is appointed and qualified.

18 State Board members, while serving on business of the State  
19 Board, shall receive actual and necessary travel and  
20 subsistence expenses while so serving away from their places of  
21 residence. A member of the State Board who experiences a  
22 significant financial hardship due to the loss of income on  
23 days of attendance at meetings or while otherwise engaged in  
24 the business of the State Board may be paid a hardship  
25 allowance, as determined by and subject to the approval of the  
26 Governor's Travel Control Board.

27 The Governor shall designate one of the members to serve as  
28 Chairman and shall name as full-time Executive Secretary of the  
29 State Board, a person qualified in health care facility  
30 planning and in administration. The Agency shall provide  
31 administrative and staff support for the State Board. The State  
32 Board shall advise the Director of its budgetary and staff  
33 needs and consult with the Director on annual budget  
34 preparation.

35 The State Board shall meet at least once each quarter, or  
36 as often as the Chairman of the State Board deems necessary, or

1 upon the request of a majority of the members.

2 Three members of the State Board shall constitute a  
3 quorum. The affirmative vote of 3 of the members of the State  
4 Board shall be necessary for any action requiring a vote to be  
5 taken by the State Board. A vacancy in the membership of the  
6 State Board shall not impair the right of a quorum to exercise  
7 all the rights and perform all the duties of the State Board as  
8 provided by this Act.

9 A State Board member shall disqualify himself or herself  
10 from the consideration of any application for a permit or  
11 exemption in which the State Board member or the State Board  
12 member's spouse, parent, or child: (i) has an economic interest  
13 in the matter; ~~or~~ (ii) is employed by, serves as a consultant  
14 for, or is a member of the governing board of the applicant or  
15 a party opposing the application; or (iii) is employed by,  
16 serves as a consultant for, or is a member of the governing  
17 board of a person the member knows, or upon reasonable inquiry  
18 should know, has an interest or seeks an interest with respect  
19 to the planning, financing, construction, or management of the  
20 matter for which a permit or exemption is sought.

21 (Source: P.A. 93-41, eff. 6-27-03; 93-889, eff. 8-9-04; revised  
22 12-15-05.)

23 (20 ILCS 3960/4.2)

24 (Section scheduled to be repealed on July 1, 2006)

25 Sec. 4.2. Ex parte communications.

26 (a) Except in the disposition of matters that agencies are  
27 authorized by law to entertain or dispose of on an ex parte  
28 basis including, but not limited to rule making, the State  
29 Board, any State Board member, employee, or a hearing officer  
30 shall not engage in ex parte communication in connection with  
31 the substance of any pending or impending application for a  
32 permit with any person or party or the representative of any  
33 party. This subsection (a) applies when the Board, member,  
34 employee, or hearing officer knows, or should know upon  
35 reasonable inquiry, that the application is pending or

1 impending.

2 (b) A State Board member or employee may communicate with  
3 other members or employees and any State Board member or  
4 hearing officer may have the aid and advice of one or more  
5 personal assistants.

6 (c) An ex parte communication received by the State Board,  
7 any State Board member, employee, or a hearing officer shall be  
8 made a part of the record of the matter, including all written  
9 communications, all written responses to the communications,  
10 and a memorandum stating the substance of all oral  
11 communications and all responses made and the identity of each  
12 person from whom the ex parte communication was received.

13 (d) "Ex parte communication" means a communication between  
14 a person who is not a State Board member or employee and a  
15 State Board member or employee that reflects on the substance  
16 of a pending or impending State Board proceeding and that takes  
17 place outside the record of the proceeding. Communications  
18 regarding matters of procedure and practice, such as the format  
19 of pleading, number of copies required, manner of service, and  
20 status of proceedings, are not considered ex parte  
21 communications. Statements publicly made in a meeting open to  
22 the public are not considered ex parte communications.  
23 Technical assistance with respect to an application, not  
24 intended to influence any decision on the application, may be  
25 provided by employees to the applicant. Any assistance shall be  
26 documented in writing by the applicant and employees within 10  
27 business days after the assistance is provided.

28 (e) For purposes of this Section, "employee" means a person  
29 the State Board or the Agency employs on a full-time,  
30 part-time, contract, or intern basis.

31 (f) The State Board, State Board member, or hearing  
32 examiner presiding over the proceeding, in the event of a  
33 violation of this Section, must take whatever action is  
34 necessary to ensure that the violation does not prejudice any  
35 party or adversely affect the fairness of the proceedings.

36 (g) Nothing in this Section shall be construed to prevent

1 the State Board or any member of the State Board from  
2 consulting with the attorney for the State Board.

3 (Source: P.A. 93-889, eff. 8-9-04.)

4 (20 ILCS 3960/5) (from Ch. 111 1/2, par. 1155)

5 (Section scheduled to be repealed on July 1, 2006)

6 Sec. 5. After effective dates set by the State Board, no  
7 person shall construct, modify or establish a health care  
8 facility or acquire major medical equipment without first  
9 obtaining a permit or exemption from the State Board. The State  
10 Board shall not delegate to the Executive Secretary of the  
11 State Board or any other person or entity the authority to  
12 grant permits or exemptions whenever the Executive Secretary or  
13 other person or entity would be required to exercise any  
14 discretion affecting the decision to grant a permit or  
15 exemption. The State Board shall set effective dates applicable  
16 to all or to each classification or category of health care  
17 facilities and applicable to all or each type of transaction  
18 for which a permit is required. Varying effective dates may be  
19 set, providing the date or dates so set shall apply uniformly  
20 statewide.

21 Notwithstanding any effective dates established by this  
22 Act or by the State Board, no person shall be required to  
23 obtain a permit for any purpose under this Act until the State  
24 health facilities plan referred to in paragraph (4) of Section  
25 12 of this Act has been approved and adopted by the State Board  
26 subsequent to public hearings having been held thereon.

27 A permit or exemption shall be obtained prior to the  
28 acquisition of major medical equipment or to the construction  
29 or modification of a health care facility which:

30 (a) requires a total capital expenditure in excess of  
31 the capital expenditure minimum; or

32 (b) except for the establishment of swing beds  
33 authorized under Title XVIII of the federal Social Security  
34 Act, substantially changes the scope or changes the  
35 functional operation of the facility; or

1 (c) changes the bed capacity of a health care facility  
2 by increasing the total number of beds or by distributing  
3 beds among various categories of service or by relocating  
4 beds from one physical facility or site to another by more  
5 than 20 ~~10~~ beds or more than 10% of total bed capacity as  
6 defined by the State Board, whichever is less, over a 2  
7 year period.

8 A permit shall be valid only for the defined construction  
9 or modifications, site, amount and person named in the  
10 application for such permit and shall not be transferable or  
11 assignable. A permit shall be valid until such time as the  
12 project has been completed, provided that (a) obligation of the  
13 project occurs within 12 months following issuance of the  
14 permit except for major construction projects such obligation  
15 must occur within 18 months following issuance of the permit;  
16 and (b) the project commences and proceeds to completion with  
17 due diligence. Major construction projects, for the purposes of  
18 this Act, shall include but are not limited to: projects for  
19 the construction of new buildings; additions to existing  
20 facilities; modernization projects whose cost is in excess of  
21 \$1,000,000 or 10% of the facilities' operating revenue,  
22 whichever is less; and such other projects as the State Board  
23 shall define and prescribe pursuant to this Act. The State  
24 Board may extend the obligation period upon a showing of good  
25 cause by the permit holder. Permits for projects that have not  
26 been obligated within the prescribed obligation period shall  
27 expire on the last day of that period.

28 Persons who otherwise would be required to obtain a permit  
29 shall be exempt from such requirement if the State Board finds  
30 that with respect to establishing a new facility or  
31 construction of new buildings or additions or modifications to  
32 an existing facility, final plans and specifications for such  
33 work have prior to October 1, 1974, been submitted to and  
34 approved by the Department of Public Health in accordance with  
35 the requirements of applicable laws. Such exemptions shall be  
36 null and void after December 31, 1979 unless binding

1 construction contracts were signed prior to December 1, 1979  
2 and unless construction has commenced prior to December 31,  
3 1979. Such exemptions shall be valid until such time as the  
4 project has been completed provided that the project proceeds  
5 to completion with due diligence.

6 The acquisition by any person of major medical equipment  
7 that will not be owned by or located in a health care facility  
8 and that will not be used to provide services to inpatients of  
9 a health care facility shall be exempt from review provided  
10 that a notice is filed in accordance with exemption  
11 requirements.

12 Notwithstanding any other provision of this Act, no permit  
13 or exemption is required for the construction or modification  
14 of a non-clinical service area of a health care facility.

15 (Source: P.A. 91-782, eff. 6-9-00.)

16 (20 ILCS 3960/19.6)

17 (Section scheduled to be repealed on July 1, 2006)

18 Sec. 19.6. Repeal. This Act is repealed on July 1, 2011  
19 ~~2006~~.

20 (Source: P.A. 93-41, eff. 6-27-03; 93-889, eff. 8-9-04.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.