



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0611

Introduced 2/8/2007, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

20 ILCS 3960/3	from Ch. 111 1/2, par. 1153
20 ILCS 3960/4	from Ch. 111 1/2, par. 1154
20 ILCS 3960/5	from Ch. 111 1/2, par. 1155
20 ILCS 3960/19.6	

Amends the Illinois Health Facilities Planning Act. Redefines a "health care facility" to add cardiac catheterization laboratories and medical care facilities that are leased, owned, or operated by or on behalf of an out-of-state facility. Increases the Health Facilities Planning Board from 5 to 9 members. Provides that (i) the installation of swing beds and (ii) an increase in bed capacity of more than 20 (now, more than 10) do not require a permit or exemption in advance. Repeals the Act on July 1, 2012 (now, April 1, 2007). Effective immediately.

LRB095 10811 JAM 31061 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 3, 4, 5, and 19.6 as follows:

6 (20 ILCS 3960/3) (from Ch. 111 1/2, par. 1153)

7 (Section scheduled to be repealed on April 1, 2007)

8 Sec. 3. Definitions. As used in this Act:

9 "Health care facilities" means and includes the following
10 facilities and organizations:

11 1. An ambulatory surgical treatment center required to
12 be licensed pursuant to the Ambulatory Surgical Treatment
13 Center Act;

14 2. An institution, place, building, or agency required
15 to be licensed pursuant to the Hospital Licensing Act;

16 3. Skilled and intermediate long term care facilities
17 licensed under the Nursing Home Care Act;

18 ~~3. Skilled and intermediate long term care facilities~~
19 ~~licensed under the Nursing Home Care Act;~~

20 4. Hospitals, nursing homes, ambulatory surgical
21 treatment centers, or kidney disease treatment centers
22 maintained by the State or any department or agency
23 thereof;

1 5. Kidney disease treatment centers, including a
2 free-standing hemodialysis unit required to be licensed
3 under the End Stage Renal Disease Facility Act; ~~and~~

4 6. An institution, place, building, or room used for
5 the performance of outpatient surgical procedures that is
6 leased, owned, or operated by or on behalf of an
7 out-of-state facility; ~~and~~

8 7. Cardiac catheterization laboratories that are not
9 located in an institution, place, building, or agency
10 required to be licensed pursuant to the Hospital Licensing
11 Act or an ambulatory surgical treatment center required to
12 be licensed pursuant to the Ambulatory Surgical Treatment
13 Center Act; and

14 8. An institution, place, building, or room, whose cost
15 of construction is greater than the capital expenditure
16 minimum, that is used for the delivery of medical care and
17 that is leased, owned, or operated by or on behalf of an
18 out-of-state facility.

19 No federally owned facility shall be subject to the
20 provisions of this Act, nor facilities used solely for healing
21 by prayer or spiritual means; ~~and~~

22 No facility licensed under the Supportive Residences
23 Licensing Act or the Assisted Living and Shared Housing Act
24 shall be subject to the provisions of this Act.

25 A facility designated as a supportive living facility that
26 is in good standing with the program established under Section

1 5-5.01a of the Illinois Public Aid Code shall not be subject to
2 the provisions of this Act.

3 This Act does not apply to facilities granted waivers under
4 Section 3-102.2 of the Nursing Home Care Act. However, if a
5 demonstration project under that Act applies for a certificate
6 of need to convert to a nursing facility, it shall meet the
7 licensure and certificate of need requirements in effect as of
8 the date of application.

9 This Act does not apply to a dialysis facility that
10 provides only dialysis training, support, and related services
11 to individuals with end stage renal disease who have elected to
12 receive home dialysis. This Act does not apply to a dialysis
13 unit located in a licensed nursing home that offers or provides
14 dialysis-related services to residents with end stage renal
15 disease who have elected to receive home dialysis within the
16 nursing home. The Board, however, may require these dialysis
17 facilities and licensed nursing homes to report statistical
18 information on a quarterly basis to the Board to be used by the
19 Board to conduct analyses on the need for proposed kidney
20 disease treatment centers.

21 This Act shall not apply to the closure of an entity or a
22 portion of an entity licensed under the Nursing Home Care Act
23 that elects to convert, in whole or in part, to an assisted
24 living or shared housing establishment licensed under the
25 Assisted Living and Shared Housing Act.

26 With the exception of those health care facilities

1 specifically included in this Section, nothing in this Act
2 shall be intended to include facilities operated as a part of
3 the practice of a physician or other licensed health care
4 professional, whether practicing in his individual capacity or
5 within the legal structure of any partnership, medical or
6 professional corporation, or unincorporated medical or
7 professional group. Further, this Act shall not apply to
8 physicians or other licensed health care professional's
9 practices where such practices are carried out in a portion of
10 a health care facility under contract with such health care
11 facility by a physician or by other licensed health care
12 professionals, whether practicing in his individual capacity
13 or within the legal structure of any partnership, medical or
14 professional corporation, or unincorporated medical or
15 professional groups. This Act shall apply to construction or
16 modification and to establishment by such health care facility
17 of such contracted portion which is subject to facility
18 licensing requirements, irrespective of the party responsible
19 for such action or attendant financial obligation.

20 "Person" means any one or more natural persons, legal
21 entities, governmental bodies other than federal, or any
22 combination thereof.

23 "Consumer" means any person other than a person (a) whose
24 major occupation currently involves or whose official capacity
25 within the last 12 months has involved the providing,
26 administering or financing of any type of health care facility,

1 (b) who is engaged in health research or the teaching of
2 health, (c) who has a material financial interest in any
3 activity which involves the providing, administering or
4 financing of any type of health care facility, or (d) who is or
5 ever has been a member of the immediate family of the person
6 defined by (a), (b), or (c).

7 "State Board" means the Health Facilities Planning Board.

8 "Construction or modification" means the establishment,
9 erection, building, alteration, reconstruction, modernization,
10 improvement, extension, discontinuation, change of ownership,
11 of or by a health care facility, or the purchase or acquisition
12 by or through a health care facility of equipment or service
13 for diagnostic or therapeutic purposes or for facility
14 administration or operation, or any capital expenditure made by
15 or on behalf of a health care facility which exceeds the
16 capital expenditure minimum; however, any capital expenditure
17 made by or on behalf of a health care facility for (i) the
18 construction or modification of a facility licensed under the
19 Assisted Living and Shared Housing Act or (ii) a conversion
20 project undertaken in accordance with Section 30 of the Older
21 Adult Services Act shall be excluded from any obligations under
22 this Act.

23 "Establish" means the construction of a health care
24 facility or the replacement of an existing facility on another
25 site.

26 "Major medical equipment" means medical equipment which is

1 used for the provision of medical and other health services and
2 which costs in excess of the capital expenditure minimum,
3 except that such term does not include medical equipment
4 acquired by or on behalf of a clinical laboratory to provide
5 clinical laboratory services if the clinical laboratory is
6 independent of a physician's office and a hospital and it has
7 been determined under Title XVIII of the Social Security Act to
8 meet the requirements of paragraphs (10) and (11) of Section
9 1861(s) of such Act. In determining whether medical equipment
10 has a value in excess of the capital expenditure minimum, the
11 value of studies, surveys, designs, plans, working drawings,
12 specifications, and other activities essential to the
13 acquisition of such equipment shall be included.

14 "Capital Expenditure" means an expenditure: (A) made by or
15 on behalf of a health care facility (as such a facility is
16 defined in this Act); and (B) which under generally accepted
17 accounting principles is not properly chargeable as an expense
18 of operation and maintenance, or is made to obtain by lease or
19 comparable arrangement any facility or part thereof or any
20 equipment for a facility or part; and which exceeds the capital
21 expenditure minimum.

22 For the purpose of this paragraph, the cost of any studies,
23 surveys, designs, plans, working drawings, specifications, and
24 other activities essential to the acquisition, improvement,
25 expansion, or replacement of any plant or equipment with
26 respect to which an expenditure is made shall be included in

1 determining if such expenditure exceeds the capital
2 expenditures minimum. Donations of equipment or facilities to a
3 health care facility which if acquired directly by such
4 facility would be subject to review under this Act shall be
5 considered capital expenditures, and a transfer of equipment or
6 facilities for less than fair market value shall be considered
7 a capital expenditure for purposes of this Act if a transfer of
8 the equipment or facilities at fair market value would be
9 subject to review.

10 "Capital expenditure minimum" means \$6,000,000, which
11 shall be annually adjusted to reflect the increase in
12 construction costs due to inflation, for major medical
13 equipment and for all other capital expenditures; provided,
14 however, that when a capital expenditure is for the
15 construction or modification of a health and fitness center,
16 "capital expenditure minimum" means the capital expenditure
17 minimum for all other capital expenditures in effect on March
18 1, 2000, which shall be annually adjusted to reflect the
19 increase in construction costs due to inflation.

20 "Non-clinical service area" means an area (i) for the
21 benefit of the patients, visitors, staff, or employees of a
22 health care facility and (ii) not directly related to the
23 diagnosis, treatment, or rehabilitation of persons receiving
24 services from the health care facility. "Non-clinical service
25 areas" include, but are not limited to, chapels; gift shops;
26 news stands; computer systems; tunnels, walkways, and

1 elevators; telephone systems; projects to comply with life
2 safety codes; educational facilities; student housing;
3 patient, employee, staff, and visitor dining areas;
4 administration and volunteer offices; modernization of
5 structural components (such as roof replacement and masonry
6 work); boiler repair or replacement; vehicle maintenance and
7 storage facilities; parking facilities; mechanical systems for
8 heating, ventilation, and air conditioning; loading docks; and
9 repair or replacement of carpeting, tile, wall coverings,
10 window coverings or treatments, or furniture. Solely for the
11 purpose of this definition, "non-clinical service area" does
12 not include health and fitness centers.

13 "Areawide" means a major area of the State delineated on a
14 geographic, demographic, and functional basis for health
15 planning and for health service and having within it one or
16 more local areas for health planning and health service. The
17 term "region", as contrasted with the term "subregion", and the
18 word "area" may be used synonymously with the term "areawide".

19 "Local" means a subarea of a delineated major area that on
20 a geographic, demographic, and functional basis may be
21 considered to be part of such major area. The term "subregion"
22 may be used synonymously with the term "local".

23 "Areawide health planning organization" or "Comprehensive
24 health planning organization" means the health systems agency
25 designated by the Secretary, Department of Health and Human
26 Services or any successor agency.

1 "Local health planning organization" means those local
2 health planning organizations that are designated as such by
3 the areawide health planning organization of the appropriate
4 area.

5 "Physician" means a person licensed to practice in
6 accordance with the Medical Practice Act of 1987, as amended.

7 "Licensed health care professional" means a person
8 licensed to practice a health profession under pertinent
9 licensing statutes of the State of Illinois.

10 "Director" means the Director of the Illinois Department of
11 Public Health.

12 "Agency" means the Illinois Department of Public Health.

13 "Comprehensive health planning" means health planning
14 concerned with the total population and all health and
15 associated problems that affect the well-being of people and
16 that encompasses health services, health manpower, and health
17 facilities; and the coordination among these and with those
18 social, economic, and environmental factors that affect
19 health.

20 "Alternative health care model" means a facility or program
21 authorized under the Alternative Health Care Delivery Act.

22 "Out-of-state facility" means a person that is both (i)
23 licensed as a hospital or as an ambulatory surgery center under
24 the laws of another state or that qualifies as a hospital or an
25 ambulatory surgery center under regulations adopted pursuant
26 to the Social Security Act and (ii) not licensed under the

1 Ambulatory Surgical Treatment Center Act, the Hospital
2 Licensing Act, or the Nursing Home Care Act. Affiliates of
3 out-of-state facilities shall be considered out-of-state
4 facilities. Affiliates of Illinois licensed health care
5 facilities 100% owned by an Illinois licensed health care
6 facility, its parent, or Illinois physicians licensed to
7 practice medicine in all its branches shall not be considered
8 out-of-state facilities. Nothing in this definition shall be
9 construed to include an office or any part of an office of a
10 physician licensed to practice medicine in all its branches in
11 Illinois that is not required to be licensed under the
12 Ambulatory Surgical Treatment Center Act.

13 "Change of ownership of a health care facility" means a
14 change in the person who has ownership or control of a health
15 care facility's physical plant and capital assets. A change in
16 ownership is indicated by the following transactions: sale,
17 transfer, acquisition, lease, change of sponsorship, or other
18 means of transferring control.

19 "Related person" means any person that: (i) is at least 50%
20 owned, directly or indirectly, by either the health care
21 facility or a person owning, directly or indirectly, at least
22 50% of the health care facility; or (ii) owns, directly or
23 indirectly, at least 50% of the health care facility.

24 "Charity care" means care provided by a health care
25 facility for which the provider does not expect to receive
26 payment from the patient or a third-party payer.

1 (Source: P.A. 93-41, eff. 6-27-03; 93-766, eff. 7-20-04;
2 93-935, eff. 1-1-05; 93-1031, eff. 8-27-04; 94-342, eff.
3 7-26-05; revised 8-21-06.)

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

5 (Section scheduled to be repealed on April 1, 2007)

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

10 The State Board shall consist of 9 ~~5~~ voting members. Each
11 member shall have a reasonable knowledge of health planning,
12 health finance, or health care at the time of his or her
13 appointment. No person shall be appointed or continue to serve
14 as a member of the State Board who is, or whose spouse, parent,
15 or child is, a member of the Board of Directors of, has a
16 financial interest in, or has a business relationship with a
17 health care facility.

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

23 The State Board shall be appointed by the Governor, with
24 the advice and consent of the Senate. Not more than 5 ~~3~~ of the
25 appointments shall be of the same political party at the time

1 of the appointment. No person shall be appointed as a State
2 Board member if that person has served, after the effective
3 date of Public Act 93-41, 2 3-year terms as a State Board
4 member, except for ex officio non-voting members.

5 The Secretary of Human Services, the Director of Healthcare
6 and Family Services ~~Public Aid~~, and the Director of Public
7 Health, or their designated representatives, shall serve as
8 ex-officio, non-voting members of the State Board.

9 Of those members initially appointed by the Governor under
10 this amendatory Act of the 93rd General Assembly, 2 shall serve
11 for terms expiring July 1, 2005, 2 shall serve for terms
12 expiring July 1, 2006, and 1 shall serve for a term expiring
13 July 1, 2007. Thereafter, each appointed member, including
14 persons appointed to fill the memberships created by this
15 amendatory Act of the 95th General Assembly, shall hold office
16 for a term of 3 years, provided that any member appointed to
17 fill a vacancy occurring prior to the expiration of the term
18 for which his or her predecessor was appointed shall be
19 appointed for the remainder of such term and the term of office
20 of each successor shall commence on July 1 of the year in which
21 his predecessor's term expires. Each member appointed after the
22 effective date of this amendatory Act of the 93rd General
23 Assembly shall hold office until his or her successor is
24 appointed and qualified.

25 State Board members, while serving on business of the State
26 Board, shall receive actual and necessary travel and

1 subsistence expenses while so serving away from their places of
2 residence. A member of the State Board who experiences a
3 significant financial hardship due to the loss of income on
4 days of attendance at meetings or while otherwise engaged in
5 the business of the State Board may be paid a hardship
6 allowance, as determined by and subject to the approval of the
7 Governor's Travel Control Board.

8 The Governor shall designate one of the members to serve as
9 Chairman and shall name as full-time Executive Secretary of the
10 State Board, a person qualified in health care facility
11 planning and in administration. The Agency shall provide
12 administrative and staff support for the State Board. The State
13 Board shall advise the Director of its budgetary and staff
14 needs and consult with the Director on annual budget
15 preparation.

16 The State Board shall meet at least once each quarter, or
17 as often as the Chairman of the State Board deems necessary, or
18 upon the request of a majority of the members.

19 ~~Five~~ Three members of the State Board shall constitute a
20 quorum. The affirmative vote of 5 ~~3~~ of the members of the State
21 Board shall be necessary for any action requiring a vote to be
22 taken by the State Board. A vacancy in the membership of the
23 State Board shall not impair the right of a quorum to exercise
24 all the rights and perform all the duties of the State Board as
25 provided by this Act.

26 A State Board member shall disqualify himself or herself

1 from the consideration of any application for a permit or
2 exemption in which the State Board member or the State Board
3 member's spouse, parent, or child: (i) has an economic interest
4 in the matter; or (ii) is employed by, serves as a consultant
5 for, or is a member of the governing board of the applicant or
6 a party opposing the application.

7 (Source: P.A. 93-41, eff. 6-27-03; 93-889, eff. 8-9-04; revised
8 8-21-06.)

9 (20 ILCS 3960/5) (from Ch. 111 1/2, par. 1155)

10 (Section scheduled to be repealed on April 1, 2007)

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

1 Notwithstanding any effective dates established by this
2 Act or by the State Board, no person shall be required to
3 obtain a permit for any purpose under this Act until the State
4 health facilities plan referred to in paragraph (4) of Section
5 12 of this Act has been approved and adopted by the State Board
6 subsequent to public hearings having been held thereon.

7 A permit or exemption shall be obtained prior to the
8 acquisition of major medical equipment or to the construction
9 or modification of a health care facility which:

10 (a) requires a total capital expenditure in excess of
11 the capital expenditure minimum; or

12 (b) except for the establishment of swing beds
13 authorized under Title XVIII of the federal Social Security
14 Act, substantially changes the scope or changes the
15 functional operation of the facility; or

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

23 A permit shall be valid only for the defined construction
24 or modifications, site, amount and person named in the
25 application for such permit and shall not be transferable or
26 assignable. A permit shall be valid until such time as the

1 project has been completed, provided that (a) obligation of the
2 project occurs within 12 months following issuance of the
3 permit except for major construction projects such obligation
4 must occur within 18 months following issuance of the permit;
5 and (b) the project commences and proceeds to completion with
6 due diligence. Major construction projects, for the purposes of
7 this Act, shall include but are not limited to: projects for
8 the construction of new buildings; additions to existing
9 facilities; modernization projects whose cost is in excess of
10 \$1,000,000 or 10% of the facilities' operating revenue,
11 whichever is less; and such other projects as the State Board
12 shall define and prescribe pursuant to this Act. The State
13 Board may extend the obligation period upon a showing of good
14 cause by the permit holder. Permits for projects that have not
15 been obligated within the prescribed obligation period shall
16 expire on the last day of that period.

17 Persons who otherwise would be required to obtain a permit
18 shall be exempt from such requirement if the State Board finds
19 that with respect to establishing a new facility or
20 construction of new buildings or additions or modifications to
21 an existing facility, final plans and specifications for such
22 work have prior to October 1, 1974, been submitted to and
23 approved by the Department of Public Health in accordance with
24 the requirements of applicable laws. Such exemptions shall be
25 null and void after December 31, 1979 unless binding
26 construction contracts were signed prior to December 1, 1979

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

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

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

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

15 (20 ILCS 3960/19.6)

16 (Section scheduled to be repealed on April 1, 2007)

17 Sec. 19.6. Repeal. This Act is repealed on July ~~April~~ 1,
18 2012 ~~2007~~.

19 (Source: P.A. 93-41, eff. 6-27-03; 93-889, eff. 8-9-04; 94-983,
20 eff. 6-30-06.)

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