



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2153

Introduced 2/20/2009, by Sen. Bill Brady

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 3960/6	from Ch. 111 1/2, par. 1156
20 ILCS 3960/12.2	
20 ILCS 3960/19.6 rep.	

Amends the Illinois Health Facilities Planning Act. Removes kidney disease treatment centers from the Act's application. In granting permits, provides that the Health Facilities Planning Board may consider the area's population growth but may not consider the applicant's charity care. Requires that the Compensation Review Board determine compensation for the voting members of the Health Facilities Planning Board commensurate with their duties and professional credentials. Removes the authority of the Department of Public Health to review and certify applications. Removes the July 1, 2009 repeal date. Makes other changes. Effective immediately.

LRB096 10762 JAM 20954 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, 6, and 12.2 as follows:

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

7 (Section scheduled to be repealed on July 1, 2009)

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

22 5. (Blank) ~~Kidney disease treatment centers, including~~
23 ~~a free standing hemodialysis unit required to be licensed~~

1 ~~under the End Stage Renal Disease Facility Act; and~~

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

6 This Act shall not apply to the construction of any new
7 facility or the renovation of any existing facility located on
8 any campus facility as defined in Section 5-5.8b of the
9 Illinois Public Aid Code, provided that the campus facility
10 encompasses 30 or more contiguous acres and that the new or
11 renovated facility is intended for use by a licensed
12 residential facility.

13 No federally owned facility shall be subject to the
14 provisions of this Act, nor facilities used solely for healing
15 by prayer or spiritual means.

16 No facility licensed under the Supportive Residences
17 Licensing Act or the Assisted Living and Shared Housing Act
18 shall be subject to the provisions of this Act.

19 A facility designated as a supportive living facility that
20 is in good standing with the program established under Section
21 5-5.01a of the Illinois Public Aid Code shall not be subject to
22 the provisions of this Act.

23 This Act does not apply to facilities granted waivers under
24 Section 3-102.2 of the Nursing Home Care Act. However, if a
25 demonstration project under that Act applies for a certificate
26 of need to convert to a nursing facility, it shall meet the

1 licensure and certificate of need requirements in effect as of
2 the date of application.

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

15 This Act shall not apply to the closure of an entity or a
16 portion of an entity licensed under the Nursing Home Care Act,
17 with the exceptions of facilities operated by a county or
18 Illinois Veterans Homes, that elects to convert, in whole or in
19 part, to an assisted living or shared housing establishment
20 licensed under the Assisted Living and Shared Housing Act.

21 This Act does not apply to any change of ownership of a
22 healthcare facility that is licensed under the Nursing Home
23 Care Act, with the exceptions of facilities operated by a
24 county or Illinois Veterans Homes. Changes of ownership of
25 facilities licensed under the Nursing Home Care Act must meet
26 the requirements set forth in Sections 3-101 through 3-119 of

1 the Nursing Home Care Act.

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

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

25 "Consumer" means any person other than a person (a) whose
26 major occupation currently involves or whose official capacity

1 within the last 12 months has involved the providing,
2 administering or financing of any type of health care facility,
3 (b) who is engaged in health research or the teaching of
4 health, (c) who has a material financial interest in any
5 activity which involves the providing, administering or
6 financing of any type of health care facility, or (d) who is or
7 ever has been a member of the immediate family of the person
8 defined by (a), (b), or (c).

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

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

25 "Establish" means the construction of a health care
26 facility or the replacement of an existing facility on another

1 site.

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

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

24 For the purpose of this paragraph, the cost of any studies,
25 surveys, designs, plans, working drawings, specifications, and
26 other activities essential to the acquisition, improvement,

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

12 "Capital expenditure minimum" means \$6,000,000, which
13 shall be annually adjusted to reflect the increase in
14 construction costs due to inflation, for major medical
15 equipment and for all other capital expenditures; provided,
16 however, that when a capital expenditure is for the
17 construction or modification of a health and fitness center,
18 "capital expenditure minimum" means the capital expenditure
19 minimum for all other capital expenditures in effect on March
20 1, 2000, which shall be annually adjusted to reflect the
21 increase in construction costs due to inflation.

22 "Non-clinical service area" means an area (i) for the
23 benefit of the patients, visitors, staff, or employees of a
24 health care facility and (ii) not directly related to the
25 diagnosis, treatment, or rehabilitation of persons receiving
26 services from the health care facility. "Non-clinical service

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

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

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

25 "Areawide health planning organization" or "Comprehensive
26 health planning organization" means the health systems agency

1 designated by the Secretary, Department of Health and Human
2 Services or any successor agency.

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

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

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

12 "Director" means the Director of the Illinois Department of
13 Public Health.

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

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

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

24 "Out-of-state facility" means a person that is both (i)
25 licensed as a hospital or as an ambulatory surgery center under
26 the laws of another state or that qualifies as a hospital or an

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

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

21 "Related person" means any person that: (i) is at least 50%
22 owned, directly or indirectly, by either the health care
23 facility or a person owning, directly or indirectly, at least
24 50% of the health care facility; or (ii) owns, directly or
25 indirectly, at least 50% of the health care facility.

26 "Charity care" means care provided by a health care

1 facility for which the provider does not expect to receive
2 payment from the patient or a third-party payer.

3 "Freestanding emergency center" means a facility subject
4 to licensure under Section 32.5 of the Emergency Medical
5 Services (EMS) Systems Act.

6 (Source: P.A. 94-342, eff. 7-26-05; 95-331, eff. 8-21-07;
7 95-543, eff. 8-28-07; 95-584, eff. 8-31-07; 95-727, eff.
8 6-30-08; 95-876, eff. 8-21-08.)

9 (20 ILCS 3960/4) (from Ch. 111 1/2, par. 1154)

10 (Section scheduled to be repealed on July 1, 2009)

11 Sec. 4. Health Facilities Planning Board; membership;
12 appointment; term; compensation; quorum. There is created
13 within the executive branch of State government and independent
14 of any State agency the Health Facilities Planning Board, which
15 shall perform the functions described in this Act.

16 The State Board shall consist of 5 voting members. Each
17 member shall have professional credentials and experience in
18 the field of ~~a reasonable knowledge of~~ health planning, health
19 finance, or health care at the time of his or her appointment.
20 No person shall be appointed or continue to serve as a member
21 of the State Board who is, or whose spouse, parent, or child
22 is, a member of the Board of Directors of, has a financial
23 interest in, or has a business relationship with a health care
24 facility.

25 Notwithstanding any provision of this Section to the

1 contrary, the term of office of each member of the State Board
2 is abolished on the effective date of this amendatory Act of
3 the 93rd General Assembly and those members no longer hold
4 office.

5 The State Board shall be appointed by the Governor, with
6 the advice and consent of the Senate. Not more than 3 of the
7 appointments shall be of the same political party at the time
8 of the appointment. No person shall be appointed as a State
9 Board member if that person has served, after the effective
10 date of Public Act 93-41, 2 3-year terms as a State Board
11 member, except for ex officio non-voting members.

12 The Secretary of Human Services, the Director of Healthcare
13 and Family Services, and the Director of Public Health, or
14 their designated representatives, shall serve as ex-officio,
15 non-voting members of the State Board.

16 Of those members initially appointed by the Governor under
17 this amendatory Act of the 93rd General Assembly, 2 shall serve
18 for terms expiring July 1, 2005, 2 shall serve for terms
19 expiring July 1, 2006, and 1 shall serve for a term expiring
20 July 1, 2007. Thereafter, each appointed member shall hold
21 office for a term of 3 years, provided that any member
22 appointed to fill a vacancy occurring prior to the expiration
23 of the term for which his or her predecessor was appointed
24 shall be appointed for the remainder of such term and the term
25 of office of each successor shall commence on July 1 of the
26 year in which his predecessor's term expires. Each member

1 appointed after the effective date of this amendatory Act of
2 the 93rd General Assembly shall hold office until his or her
3 successor is appointed and qualified.

4 Voting State Board members shall receive compensation
5 commensurate with their duties and professional credentials as
6 determined by the Compensation Review Board.

7 ~~State Board members, while serving on business of the State~~
8 ~~Board, shall receive actual and necessary travel and~~
9 ~~subsistence expenses while so serving away from their places of~~
10 ~~residence. A member of the State Board who experiences a~~
11 ~~significant financial hardship due to the loss of income on~~
12 ~~days of attendance at meetings or while otherwise engaged in~~
13 ~~the business of the State Board may be paid a hardship~~
14 ~~allowance, as determined by and subject to the approval of the~~
15 ~~Governor's Travel Control Board.~~

16 The Governor shall designate one of the members to serve as
17 Chairman and shall name as full-time Executive Secretary of the
18 State Board, a person qualified in health care facility
19 planning and in administration. The Agency shall provide
20 administrative and staff support for the State Board. The State
21 Board shall advise the Director of its budgetary and staff
22 needs and consult with the Director on annual budget
23 preparation.

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

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

8 A State Board member shall disqualify himself or herself
9 from the consideration of any application for a permit or
10 exemption in which the State Board member or the State Board
11 member's spouse, parent, or child: (i) has an economic interest
12 in the matter; or (ii) is employed by, serves as a consultant
13 for, or is a member of the governing board of the applicant or
14 a party opposing the application.

15 (Source: P.A. 95-331, eff. 8-21-07.)

16 (20 ILCS 3960/6) (from Ch. 111 1/2, par. 1156)

17 (Section scheduled to be repealed on July 1, 2009)

18 Sec. 6. Application for permit or exemption; exemption
19 regulations.

20 (a) An application for a permit or exemption shall be made
21 to the State Board upon forms provided by the State Board. This
22 application shall contain such information as the State Board
23 deems necessary. Such application shall include affirmative
24 evidence on which the Director may make the findings required
25 under this Section and upon which the State Board may make its

1 decision on the approval or denial of the permit or exemption.

2 (b) The State Board shall establish by regulation the
3 procedures and requirements regarding issuance of exemptions.
4 An exemption shall be approved when information required by the
5 Board by rule is submitted. Projects eligible for an exemption,
6 rather than a permit, include, but are not limited to, change
7 of ownership of a health care facility. For a change of
8 ownership of a health care facility between related persons,
9 the State Board shall provide by rule for an expedited process
10 for obtaining an exemption.

11 (c) All applications shall be signed by the applicant and
12 shall be verified by any 2 officers thereof.

13 (c-5) Any written review or findings of the Agency or any
14 other reviewing organization under Section 8 concerning an
15 application for a permit must be made available to the public
16 at least 14 calendar days before the meeting of the State Board
17 at which the review or findings are considered. The applicant
18 and members of the public may submit, to the State Board,
19 written responses in support of or in opposition to the review
20 or findings of the Agency or reviewing organization. A written
21 response must be submitted at least 2 business days before the
22 meeting of the State Board. At the meeting, the State Board
23 may, in its discretion, permit the submission of additional
24 written materials.

25 (d) Upon receipt of an application for a permit, the State
26 Board shall approve and authorize the issuance of a permit if

1 it finds (1) that the applicant is fit, willing, and able to
2 provide a proper standard of health care service for the
3 community with particular regard to the qualification,
4 background and character of the applicant, (2) that economic
5 feasibility is demonstrated in terms of effect on the existing
6 and projected operating budget of the applicant and of the
7 health care facility; in terms of the applicant's ability to
8 establish and operate such facility in accordance with
9 licensure regulations promulgated under pertinent state laws;
10 and in terms of the projected impact on the total health care
11 expenditures in the facility and community, (3) that safeguards
12 are provided which assure that the establishment, construction
13 or modification of the health care facility or acquisition of
14 major medical equipment is consistent with the public interest,
15 and (4) that the proposed project is consistent with the
16 orderly and economic development of such facilities and
17 equipment and is in accord with standards, criteria, or plans
18 of need adopted and approved pursuant to the provisions of
19 Section 12 of this Act.

20 The State Board's standards for its findings under this
21 subsection may include consideration of the population growth,
22 or projected growth, of the area to be served but may not
23 include consideration of the applicant's charity care.

24 (Source: P.A. 95-237, eff. 1-1-08.)

1 (Section scheduled to be repealed on July 1, 2009)

2 Sec. 12.2. Powers of the State Board Agency. For purposes
3 of this Act, the State Board Agency shall exercise the
4 following powers and duties:

5 (1) ~~(Blank) Review applications for permits and exemptions~~
6 ~~in accordance with the standards, criteria, and plans of need~~
7 ~~established by the State Board under this Act and certify its~~
8 ~~finding to the State Board.~~

9 (1.5) Post the following on its ~~the Department's~~ web site:
10 relevant (i) rules, (ii) standards, (iii) criteria, (iv) State
11 norms, (v) references used by Agency staff in making
12 determinations about whether application criteria are met, and
13 (vi) notices of project-related filings, including notice of
14 public comments related to the application.

15 (2) Charge and collect an amount determined by the State
16 Board to be reasonable fees for the processing of applications
17 by the State Board, ~~the Agency,~~ and the appropriate recognized
18 areawide health planning organization. The State Board shall
19 set the amounts by rule. All fees and fines collected under the
20 provisions of this Act shall be deposited into the Illinois
21 Health Facilities Planning Fund to be used for the expenses of
22 administering this Act.

23 (3) Coordinate with other State agencies having
24 responsibilities affecting health care facilities, including
25 those of licensure and cost reporting.

26 (Source: P.A. 93-41, eff. 6-27-03.)

1 (20 ILCS 3960/19.6 rep.)

2 Section 10. The Illinois Health Facilities Planning Act is
3 amended by repealing Section 19.6.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.