

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time \_\_\_\_\_

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

# ENROLLED

HOUSE BILL No. 1789

(By Mr. Hartman )

— ● —

Passed April 11, 1981

In Effect July 1, 1981 ~~Passage~~



No: 1789

**ENROLLED**

**H. B. 1789**

(By MRS. HARTMAN)

[Passed April 11, 1981; in effect July 1, 1981.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to public health and requiring a certificate of need prior to the acquiring, offering or development of all new institutional health services within this state; defining terms; requiring institutional health services to be subject to review; providing for exemptions; permitting the state health planning and development agency to administer the certificate of need program; providing for cooperation with the statewide health coordinating council and other persons; strengthening competition and allocating supply of health services; enumerating criteria for certificate of need program; providing for procedure for conducting a certificate of need review; providing for reconsideration hearings; providing for rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional regulations; providing for adoption of review data; giving power to render a final decision; authorizing power to issue a certificate of need where appropriate; requiring written findings; providing for a capital expenditure maximum; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for nontransference, compliance and withdrawal of certificates of need; providing for denial of license; providing for injunction relief and civil action; and providing for a civil penalty.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article two-d, chapter sixteen of the code of the West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-2. Definitions.**

- 1 As used in this article, unless otherwise indicated by the
- 2 context:
- 3 (a) "Affected person" means:
- 4 (1) The applicant;
- 5 (2) The applicable health systems agency;
- 6 (3) Health systems agencies serving the contiguous health
- 7 service areas or located within the same standard metropoli-
- 8 tan statistical area;
- 9 (4) Any individual residing within the geographic area
- 10 served or to be served by the applicant;
- 11 (5) Any individual who regularly uses the health care fa-
- 12 cilities within that geographic area;
- 13 (6) The health care facilities located in the applicable
- 14 health service area which provide services similar to the
- 15 services of the facility under review;
- 16 (7) The health care facilities which, prior to receipt by
- 17 the state agency of the proposal being reviewed, have form-
- 18 ally indicated an intention to provide similar services in the
- 19 future;
- 20 (8) Third party payers who reimburse any health care
- 21 facilities for services in the applicable health service area; or
- 22 (9) Any agency which establishes rates for the health care
- 23 facilities located in the applicable health service area;
- 24 (10) Organizations representing health care providers.
- 25 (b) "Ambulatory health care facility" means a facility,

26 which is freestanding and not physically attached to a health  
27 care facility and which provides health care to noninstitution-  
28 alized and nonhomebound persons on an outpatient basis.  
29 This definition does not include the legally authorized prac-  
30 tice of medicine by any one or more persons in the private  
31 offices of any health care providers: *Provided*, That this defi-  
32 nition does not include the legally authorized provision of  
33 health care services by any one or more health professionals  
34 licensed to practice in this state pursuant to the provisions of  
35 chapter thirty of this code.

36 (c) "Ambulatory surgical facility" means a facility which  
37 is freestanding and not physically attached to a health care  
38 facility and which provides surgical treatment to patients not  
39 requiring hospitalization. This definition does not include  
40 the legally authorized practice of surgery by any one or more  
41 persons in the private offices of any health care providers.

42 (d) "Annual implementation plan" means a plan establish-  
43 ed, annually reviewed and amended as necessary by a health  
44 systems agency in conformance with section 1513 (b) (3) of  
45 the public health service act, as amended, Title 42 United States  
46 Code section 3001-2(b) (3), which describes objectives which  
47 will achieve the goals of the health systems plan, or, if those  
48 goals are amended by the statewide health coordinating coun-  
49 cil when included in the state health plan, as so amended, and  
50 priorities among the objectives.

51 (e) "Applicable health service area" means a health ser-  
52 vice area, as defined in this section, in which a new institutional  
53 health service is proposed to be located.

54 (f) "Applicable health systems agency" means a health  
55 systems agency for a health service area in which a proposed  
56 new institutional health service is to be located.

57 (g) "Applicant" means: (1) The governing body or the  
58 person proposing a new institutional health service who is, or  
59 will be, the health care facility licensee wherein the new  
60 institutional health service is proposed to be located, and (2)  
61 in the case of a proposed new institutional health service not  
62 to be located in a licensed health care facility, the governing  
63 body or the person proposing to provide such new institutional

64 health service. Incorporators or promoters who will not con-  
65 stitute the governing body or persons responsible for the new  
66 institutional health service may not be an applicant.

67 (h) "Bed capacity" means the number of beds for which a  
68 license is issued to a health care facility, or, if a facility is  
69 unlicensed, the number of adult and pediatric beds perma-  
70 nently staffed and maintained for immediate use by inpatients  
71 in patient rooms or wards.

72 (i) "Capital expenditure" means an expenditure:

73 (1) Made by or on behalf of a health care facility; and

74 (2) (A) Which (i) under generally accepted accounting  
75 principles is not properly chargeable as an expense of opera-  
76 tion and maintenance, or (ii) is made to obtain either by  
77 lease or comparable arrangement any facility or part thereof  
78 or any equipment for a facility or part; and (B) which (i)  
79 exceeds the expenditure minimum, or (ii) is a substantial  
80 change to the bed capacity of the facility with respect to  
81 which the expenditure is made, or (iii) is a substantial change  
82 to the services of such facility. For purposes of part (i), sub-  
83 paragraph (B), subdivision (2) of this definition, the cost of any  
84 studies, surveys, designs, plans, working drawings, specifi-  
85 cations, and other activities, including staff effort and con-  
86 sulting and other services, essential to the acquisition, improve-  
87 ment, expansion, or replacement of any plant or equipment  
88 with respect to which an expenditure described in subparagraph  
89 (B), subdivision (2) of this definition is made shall be in-  
90 cluded in determining if such expenditure exceeds the ex-  
91 penditure minimum. Donations of equipment or facilities  
92 to a health care facility which if acquired directly by such  
93 facility would be subject to review shall be considered capi-  
94 tal expenditures, and a transfer of equipment or facilities for  
95 less than fair market value shall be considered a capital ex-  
96 penditure for purposes of such subdivisions if a transfer  
97 of the equipment or facilities at fair market value would be  
98 subject to review. A series of expenditures, each less than the  
99 expenditure minimum, which when taken together are in  
100 excess of the expenditure minimum, may be determined by the  
101 state agency to be a single capital expenditure subject to

102 review. In making its determination, the state agency shall  
103 consider: Whether the expenditures are for components of a  
104 system which is required to accomplish a single purpose;  
105 whether the expenditures are to be made over a two-year  
106 period and are directed towards the accomplishment of a  
107 single goal within the health care facility's long range plan;  
108 or, whether the expenditures are to be made within a two-  
109 year period within a single department such that they will  
110 constitute a significant modernization of the department.

111 (j) "Expenditure minimum" means one hundred fifty thou-  
112 sand dollars for the twelve-month period beginning the first  
113 day of October, one thousand nine hundred seventy-nine. For  
114 each twelve-month period thereafter, the state agency may,  
115 by regulations adopted pursuant to section eight of this article,  
116 adjust the expenditure minimum to reflect the impact of  
117 inflation.

118 (k) "Health," used as a term, includes physical and mental  
119 health.

120 (i) "Health, care facility" is defined as including  
121 hospitals, skilled nursing facilities, kidney disease treat-  
122 ment centers, including freestanding hemodialysis units, inter-  
123 mediate care facilities, ambulatory health care facilities,  
124 ambulatory surgical facilities, home health agencies, re-  
125 habilitation facilities, and health maintenance organiza-  
126 tion; whether under public or private ownership, or as  
127 a profit or nonprofit organization and whether or not  
128 licensed or required to be licensed in whole or in part by  
129 the state.

130 (m) "Health care provider" means a person, partnership,  
131 corporation, facility or institution licensed or certified or  
132 authorized by law to provide professional health care service  
133 in this state to an individual during that individual's medical  
134 care, treatment or confinement.

135 (n) "Health maintenance organization" means a public or  
136 private organization, organized under the laws of this state  
137 which:

138 (1) Is a qualified health maintenance organization under

139 section 1310(d) of the public health service act, as amended,  
140 Title 42 United States Code section 300e-9(d); or

141 (2) (A) Provides or otherwise makes available to enrolled  
142 participants health care services, including substantially the  
143 following basic health care services: Usual physician services,  
144 hospitalization, laboratory, X-ray, emergency and preventive  
145 services and out-of-area coverage; and

146 (B) Is compensated except for copayments for the pro-  
147 vision of the basic health care services listed in subparagraph  
148 (B), subdivision (2) of this definition to enrolled participants  
149 on a predetermined periodic rate basis without regard to the  
150 date the health care services are provided and which is fixed  
151 without regard to the frequency, extent, or kind of health  
152 service actually provided; and

153 (C) Provides physicians' services primarily (i) directly  
154 through physicians who are either employees or partners of  
155 such organization, or (ii) through arrangements with indi-  
156 vidual physicians or one or more groups of physicians organiz-  
157 ed on a group practice or individual practice basis.

158 (o) "Health service area" means a geographic area de-  
159 signated by the federal secretary of health and human services  
160 pursuant to section 1511 of the public health service act, as  
161 amended, Title 42 United States Code section 3001, with  
162 respect to which health systems agencies shall be designated  
163 under section 1515 of such act, as amended, Title 42 United  
164 States Code section 3001-4.

165 (p) "Health services" means clinically related preventive,  
166 diagnostic, treatment or rehabilitative services, including al-  
167 cohol, drug abuse and mental health services.

168 (q) "Health systems agency" means an entity which is con-  
169 ditionally or fully designated as such by the federal secre-  
170 tary of health and human services pursuant to section 1515  
171 of the public health service act, as amended, Title 42 United  
172 States Code section 3001-4.

173 (r) "Health systems plan" means a plan established by a  
174 health systems agency, under section 1513 (b)(2) of the pub-  
175 lic health service act, as amended, Title 42 United States

176 Code section 3001-2 (b) (2), which is a detailed statement of  
177 goals describing a healthful environment and health systems of  
178 an area which, when developed will assure that quality health  
179 services will be available and accessible in a manner which  
180 assures continuity of care, at reasonable cost, for all resi-  
181 dents of that area; which are responsive to the unique needs  
182 and resources of that area; and which take into account and  
183 are consistent with the national guidelines for health planning  
184 policy issued by the federal secretary of health and human  
185 services with respect to supply, distribution and organization  
186 of health resources and services.

187 (s) "Home health agency" is an organization primarily en-  
188 gaged in providing directly or through contract arrangements,  
189 professional nursing services, home health aide services, and  
190 other therapeutic and related services including, but not limit-  
191 ed to, physical, speech and occupational therapy and nutritional  
192 and medical social services, to persons in their place of resi-  
193 dence on a part-time or intermittent basis.

194 (t) "Hospital" means an institution which is primarily en-  
195 gaged in providing to inpatients, by or under the supervision  
196 of physicians, diagnostic and therapeutic services for medical  
197 diagnosis, treatment, and care of injured, disabled, or sick  
198 persons, or rehabilitation services for the rehabilitation of in-  
199 jured, disabled or sick persons. This term also includes psy-  
200 chiatric and tuberculosis hospitals.

201 (u) "Intermediate care facility" means an institution which  
202 provides, on a regular basis, health-related care and services  
203 to individuals who do not require the degree of care and treat-  
204 ment which a hospital or skilled nursing facility is designed to  
205 provide, but who because of their mental or physical condition  
206 require health related care and services above the level of  
207 room and board.

208 (v) "Long-range plan" means a document formally adopted  
209 by the legally constituted governing body of an existing  
210 health care facility or by a person proposing a new institu-  
211 tional health service. Each long-range plan shall consist of  
212 the information required by the state agency in regulations  
213 adopted pursuant to section eight of this article.



214 (w) "Major medical equipment" means a single unit of  
215 medical equipment or a single system of components with  
216 related functions which is used for the provision of medical  
217 and other health services and which costs in excess of one  
218 hundred fifty thousand dollars, except that such term does  
219 not include medical equipment acquired by or on behalf of a  
220 clinical laboratory to provide clinical laboratory services  
221 if the clinical laboratory is independent of a physician's  
222 office and a hospital and it has been determined under Title  
223 XVIII of the social security act to meet the requirements of  
224 paragraphs ten and eleven of section 1861 (s) of such act,  
225 Title 42 United States Code sections 1395x (10) and (11).  
226 In determining whether medical equipment costs more than one  
227 hundred fifty thousand dollars, the cost of studies, surveys,  
228 designs, plans, working drawings, specifications, and other  
229 activities essential to the acquisition of such equipment shall  
230 be included. If the equipment is acquired for less than fair  
231 market value, the term "cost" includes the fair market value.

232 (x) "Medically underserved population" means the popu-  
233 lation of an urban or rural area designated by the state agency  
234 as an area with a shortage of personal health services or a  
235 population having a shortage of such services, after taking  
236 into account unusual local conditions which are a barrier to  
237 accessibility or availability of such services. Such designation  
238 shall be in regulations adopted by the state agency pursuant to  
239 section eight of this article, and the population so designated  
240 may include the state's medically underserved population  
241 designated by the federal secretary of health and human ser-  
242 vices under section 330(b) (3) of the public health service act,  
243 as amended, Title 42 United States Code section 254(b) (3).

244 (y) "New institutional health service" means such service  
245 as described in section three of this article.

246 (z) "Offer" when used in connection with health services,  
247 means that the health care facility or health maintenance  
248 organization holds itself out as capable of providing, or as  
249 having the means for the provision of, specified health services.

250 (aa) "Person" means an individual, trust, estate, partner-  
251 ship, committee, corporation, association, and other organi-

252 zations such as joint-stock companies and insurance companies,  
253 a state or a political subdivision or instrumentality thereof or  
254 any legal entity recognized by the state.

255 (bb) "Physician" means a doctor of medicine or osteopathy  
256 legally authorized to practice medicine and surgery by the  
257 state.

258 (cc) "Proposed new institutional health service" means  
259 such service as described in section three of this article.

260 (dd) "Psychiatric hospital" means an institution which pri-  
261 marily provides to inpatients, by or under the supervision of a  
262 physician, specialized services for the diagnosis, treatment  
263 and rehabilitation of mentally ill and emotionally disturbed  
264 persons.

265 (ee) "Rehabilitation facility" means an inpatient facility  
266 which is operated for the primary purpose of assisting in the  
267 rehabilitation of disabled persons through an integrated pro-  
268 gram of medical and other services which are provided under  
269 competent professional supervision.

270 (ff) "Review agency" means an agency of the state desig-  
271 nated by the governor as the agency for the review of state  
272 agency decisions.

273 (gg) "Skilled nursing facility" means an institution or a  
274 distinct part of an institution which is primarily engaged in  
275 providing to inpatients skilled nursing care and related services  
276 for patients who require medical or nursing care, or rehabili-  
277 tation services for the rehabilitation of injured, disabled or  
278 sick persons.

279 (hh) "State agency" means that agency of state government  
280 selected by the governor and designated as the state health  
281 planning and development agency in an agreement entered in-  
282 to pursuant to section 1521 of the public health service act, as  
283 amended, Title 42 United States Code section 300m.

284 (ii) "State health plan" means the document approved by  
285 the governor after preparation by the statewide health co-  
286 ordinating council pursuant to section 1524 (c) (2) of the pub-  
287 lic health service act, as amended, Title 42 United States  
288 Code section 300m-3 (c) (2).

289 (jj) "Statewide health coordinating council" means the body  
290 established pursuant to section 1524 of the public health  
291 service act, as amended, Title 42 United States Code section  
292 300m-3, to advise the state agency.

293 (kk) "Substantial change to the bed capacity" of a health  
294 care facility means a change, with which a capital expenditure  
295 is associated, in any two-year period of ten or more beds or  
296 more than ten percent, whichever is less, of the bed capacity  
297 of such facility that increases or decreases the bed capacity,  
298 redistributes beds among various categories, or relocates beds  
299 from one physical facility or site to another. A series of  
300 changes to the bed capacity of a health care facility in any  
301 two-year period, each less than ten beds or ten percent of the  
302 bed capacity of such facility, but which when taken together  
303 comprise ten or more beds or more than ten percent of the  
304 bed capacity of such facility, whichever is less, is a substantial  
305 change to the bed capacity.

306 (ll) "Substantial change to the health services" of a health  
307 care facility means the addition of a health service which is  
308 offered by or on behalf of the health care facility and which  
309 was not offered by or on behalf of the facility within the  
310 twelve-month period before the month in which the service is  
311 first offered, or the termination of a health service which was  
312 offered by or on behalf of the facility.

313 (mm) "To develop," when used in connection with health ser-  
314 vices, means to undertake those activities which upon their  
315 completion will result in the offer of a new institutional health  
316 service or the incurring of a financial obligation, in relation  
317 to the offering of such a service.

318 (nn) "Tuberculosis hospital" means an institution which  
319 is primarily engaged in providing to inpatients, by or under  
320 the supervision of a physician, medical services for the diagnosis  
321 and treatment of tuberculosis.

### **§16-2D-3. Certificate of need.**

1 Except as provided in section four of this article, any new  
2 institutional health service may not be acquired, offered or  
3 developed within this state except upon application for and

4 receipt of a certificate of need as provided by this article.  
5 Whenever a new institutional health service for which a certi-  
6 ficate of need is required by this article is proposed for a  
7 health care facility for which, pursuant to section four of this  
8 article, no certificate of need is or was required, a certificate of  
9 need shall be issued before the new institutional health service  
10 is offered or developed. No person may, knowingly charge or  
11 bill for any health services associated with any new institu-  
12 tional health service that is knowingly acquired, offered, or  
13 developed in violation of this article, and any bill made in  
14 violation of this sentence is legally unenforceable. For purposes  
15 of this article, a proposed "new institutional health service"  
16 includes:

17 (a) The construction, development, acquisition or other  
18 establishment of a new health care facility or health main-  
19 tenance organization;

20 (b) The partial or total closure of a health care facility or  
21 health maintenance organization with which a capital ex-  
22 penditure is associated;

23 (c) Any obligation for a capital expenditure incurred by or  
24 on behalf of a health care facility, except as exempted in  
25 section four of this article or health maintenance organization  
26 in excess of the expenditure minimum or any obligation for  
27 a capital expenditure incurred by any person to acquire a  
28 health care facility. An obligation for a capital expenditure  
29 is considered to be incurred by or on behalf of a health care  
30 facility:

31 (1) When a contract, enforceable under state law, is enter-  
32 ed into by or on behalf of the health care facility for the con-  
33 struction, acquisition, lease or financing of a capital asset; or

34 (2) When the governing board of the health care facility  
35 takes formal action to commit its own funds for a construction  
36 project undertaken by the health care facility as its own con-  
37 tractor; or

38 (3) In the case of donated property, on the date on which  
39 the gift is completed under state law.

40 (d) A substantial change to the bed capacity of a health  
41 care facility with which a capital expenditure is associated;

42 (e) The addition of health services which are offered by or  
43 on behalf of a health care facility or health maintenance organi-  
44 zation and which were not offered on a regular basis by or on  
45 behalf of such health care facility or health maintenance or-  
46 ganization within the twelve-month period prior to the time  
47 such services would be offered;

48 (f) The deletion of one or more health services, previously  
49 offered on a regular basis by or on behalf of a health care  
50 facility or health maintenance organization which deletion is  
51 associated with a capital expenditure;

52 (g) A substantial change to the bed capacity or health  
53 services offered by or on behalf of a health care facility,  
54 whether or not the change is associated with a proposed capital  
55 expenditure, if the change is associated with a previous capi-  
56 tal expenditure for which a certificate of need was issued and  
57 if the change will occur within two years after the date the  
58 activity which was associated with the previously approved  
59 capital expenditure was undertaken;

60 (h) The acquisition of major medical equipment which  
61 will be owned by or located in a health care facility;

62 (i) (1) The acquisition of major medical equipment which  
63 will not be owned by or located in a health care facility unless:

64 (A) At least thirty days before any person enters into a  
65 contractual arrangement to acquire major medical equipment  
66 which will not be owned by or located in a health care fa-  
67 cility, such person provides written notice to the state agency of  
68 such person's intent to acquire such equipment and of the  
69 use that will be made of the equipment; and

70 (B) Within thirty days after the date the state agency re-  
71 ceives such notice, the state agency finds that the equipment  
72 will not be used to provide services for inpatients of a hospital.

73 (2) The notice provided for in part (A), subparagraph (1),  
74 subdivision (i) of this section shall contain all information the

75 state agency requires in accordance with subsections (e) and  
76 (u), section seven of this article.

77 (3) For purposes of subdivision (i) of this section, dona-  
78 tions and leases of major medical equipment shall be con-  
79 sidered acquisitions of such equipment, and an acquisition of  
80 medical equipment through a transfer of it for less than fair  
81 market value shall be considered an acquisition of major  
82 medical equipment if its fair market value is at least one  
83 hundred fifty thousand dollars.

84 (4) If major medical equipment not located in a health  
85 care facility is acquired without a certificate of need pursuant  
86 to section four of this article and at any time it is proposed to  
87 use that equipment to serve inpatients of a hospital, a certifi-  
88 cate of need shall be issued before such equipment is so used,  
89 unless the use is one described in subparagraph (5), sub-  
90 division (i) of this section.

91 (5) For purposes of subdivision (i) of this section, an ac-  
92 quisition of major medical equipment is not required to be re-  
93 viewed if its proposed use is to provide services to inpatients  
94 of a hospital only on a temporary basis in the case of a natural  
95 disaster, a major accident, or equipment failure. The state  
96 agency may, by regulations adopted pursuant to section eight  
97 of this article, specify additional circumstances under which  
98 acquisitions of major medical equipment which will not be  
99 owned or located in a health care facility are not required to  
100 be reviewed: *Provided*, That such additional circumstances are  
101 acceptable to the federal secretary of health and human ser-  
102 vices.

103 (6) The state agency may not make any requirement in  
104 addition to this subdivision for a certificate of need for an  
105 acquisition of major medical equipment which will not be  
106 owned or located in a health care facility;

107 (j) A substantial change in an approved new institutional  
108 health service for which a certificate of need is in effect. For  
109 purposes of this subdivision "substantial change" shall be  
110 defined by the state agency in regulations adopted pursuant  
111 to section eight of this article.

**§16-2D-4. Exemptions from certificate of need program.**

1 (a) Except as provided in subdivision (i) of section three  
2 of this article, nothing in this article or the rules and regula-  
3 tions adopted pursuant to the provisions of this article may  
4 be construed to authorize the licensure, supervision, regulation  
5 or control in any manner of: (1) Private offices of physicians,  
6 private clinics of physicians, dentists or other practitioners of  
7 the healing arts; (2) dispensaries and first aid stations located  
8 within business or industrial establishments maintained solely  
9 for the use of employees: *Provided*, That such facility does not  
10 contain inpatient or resident beds for patients or employees  
11 who generally remain in the facility for more than twenty-four  
12 hours; (3) establishments, such as motels, hotels and boarding-  
13 houses which provide medical, nursing personnel and health  
14 related services; and (4) the remedial care or treatment of  
15 residents or patients in any home or institution conducted only  
16 for those who rely solely upon treatment by prayer or spiritual  
17 means in accordance with the creed or tenets of any recognized  
18 church or religious denomination.

19 (b) (1) A certificate of need is not required for the offer-  
20 ing of an inpatient institutional health service or the acquisition  
21 of major medical equipment for the provision of an inpatient  
22 institutional health service or the obligation of a capital ex-  
23 penditure for the provisions of an inpatient institutional health  
24 service, if with respect to such offering, acquisition, or obliga-  
25 tion, the state agency has, upon application under subdivision  
26 (2), subsection (b) of this section, granted an exemption to:

27 (A) A health maintenance organization or a combination  
28 of health maintenance organizations if (i) the organization  
29 or combination of organizations has, in the service area of the  
30 organization or the service areas of the organizations in the  
31 combination, an enrollment of at least fifty thousand indivi-  
32 duals, (ii) the facility in which the service will be provided is or  
33 will be geographically located so that the service will be reason-  
34 ably accessible to such enrolled individuals, and (iii) at least  
35 seventy-five percent of the patients who can reasonably be ex-  
36 pected to receive the institutional health service will be in-  
37 dividuals enrolled with such organization or organizations in  
38 the combination; or

39 (B) A health care facility if (i) the facility primarily pro-  
40 vides or will provide inpatient health services, (ii) the facility is  
41 or will be controlled, directly or indirectly, by a health mainten-  
42 ance organization or a combination of health maintenance or-  
43 ganizations which has, in the service area of the organization or  
44 service areas of the organizations in the combination, an enroll-  
45 ment of at least fifty thousand individuals, (iii) the facility is or  
46 will be geographically located so that the service will be reason-  
47 ably accessible to such enrolled individuals, and (iv) at least  
48 seventy-five percent of the patients who can reasonably be ex-  
49 pected to receive the institutional health service will be indivi-  
50 duals enrolled with such organization or organizations in the  
51 combination; or

52 (C) A health care facility, or portion thereof, if (i) the fa-  
53 cility is or will be leased by a health maintenance organization  
54 or combination of health maintenance organizations which has,  
55 in the service area of the organization or the service areas of the  
56 organizations in the combination, an enrollment of at least fifty  
57 thousand individuals and on the date the application is sub-  
58 mitted under subdivision (2), subsection (b) of this section, at  
59 least fifteen years remain in the term of the lease, (ii) the fa-  
60 cility is or will be geographically located so that the service will  
61 be reasonably accessible to such enrolled individuals, and (iii)  
62 at least seventy-five percent of the patients who can reasonably  
63 be expected to receive the new institutional health service will  
64 be individuals enrolled with such organization.

65 (2) (A) A health maintenance organization, combination of  
66 health maintenance organizations, or other health care facility  
67 is not exempt under subdivision (1), subsection (b) of this  
68 section from obtaining a certificate of need unless:

69 (i) It has submitted, at such time and in such form and  
70 manner as the state agency shall prescribe, an application for  
71 such exemption to the state agency and the appropriate health  
72 systems agency;

73 (ii) The application contains such information respecting  
74 the organization, combination, or facility and the proposed  
75 offering, acquisition, or obligation as the state agency may  
76 require to determine if the organization or combination meets



77 the requirements of subdivision (1), subsection (b) of this  
78 section or the facility meets or will meet such requirements;  
79 and

80 (iii) The state agency approves such application.

81 (B) The state agency shall approve an application sub-  
82 mitted under subparagraph (A), subdivision (2), subsection  
83 (b) of this section if it determines that the applicable require-  
84 ments of subdivision (1), subsection (b) of this section are met  
85 or will be met on the date the proposed activity for which  
86 an exemption was requested will be undertaken.

87 (3) A health care facility, or any part thereof, or medical  
88 equipment with respect to which an exemption was granted  
89 under subdivision (1), subsection (b) of this section may not  
90 be sold or leased and a controlling interest in such facility  
91 or equipment or in a lease of such facility or equipment may  
92 not be acquired and a health care facility described in sub-  
93 paragraph (C), subdivision (1), subsection (b) of this section  
94 which was granted an exemption under subdivision (1), sub-  
95 section (b) of this section may not be used by any person other  
96 than the lessee described in subparagraph (C), subdivision (1),  
97 subsection (b) of this section unless:

98 (A) The state agency issues a certificate of need approving  
99 the sale, lease, acquisition, or use; or

100 (B) The state agency determines, upon application, that  
101 the entity to which the facility or equipment is proposed to  
102 be sold or leased, which intends to acquire the controlling  
103 interest in or to use the facility is:

104 (i) A health maintenance organization or a combination of  
105 health maintenance organizations which meets the enroll-  
106 ment requirements of part (i), subparagraph (A), subdivision  
107 (1), subsection (b) of this section, and with respect to such  
108 facility or equipment, the entity meets the accessibility and  
109 patient enrollment requirements of parts (ii) and (iii), sub-  
110 paragraph (A), subdivision (1), subsection (b) of this section;  
111 or

112 (ii) A health care facility which meets the inpatient, en-  
113 rollment, and accessibility requirements of parts (i), (ii) and

114 (iii), subparagraph (B), subdivision (1), subsection (b) of this  
115 section and with respect to its patients meets the enrollment  
116 requirements of part (iv), subparagraph (B), subdivision (1),  
117 subsection (b) of this section.

118 (4) In the case of a health maintenance organization or  
119 an ambulatory care facility or health care facility which  
120 ambulatory or health care facility is controlled, directly  
121 or indirectly, by a health maintenance organization or a  
122 combination of health maintenance organizations, the cer-  
123 tificate of need requirements apply only to the offering  
124 of inpatient institutional health services, the acquisition  
125 of major medical equipment, and the obligation of capital  
126 expenditures for the offering of inpatient institutional health  
127 services and then only to the extent that such offering, ac-  
128 quisition, or obligation is not exempt under subdivision (1),  
129 subsection (b) of this section.

130 (5) The state agency shall establish the period within  
131 which approval or disapproval by the state agency of applica-  
132 tions for exemptions under subdivision (1), subsection (b) of  
133 this section shall be made.

134 (c) (1) A health care facility is not required to obtain  
135 a certificate of need for the acquisition of major medical  
136 equipment to be used solely for research, the addition of  
137 health services to be offered solely for research, or the  
138 obligation of a capital expenditure to be made solely for  
139 research if the health care facility provides the notice re-  
140 quired in subdivision (2), subsection (c) of this section and  
141 the state agency does not find, within sixty days after it  
142 receives such notice, that the acquisition, offering or obliga-  
143 tion will, or will have the effect to:

144 (A) Affect the charges of the facility for the provision  
145 of medical or other patient care services other than the services  
146 which are included in the research;

147 (B) Result in a substantial change to the bed capacity of  
148 the facility; or

149 (C) Result in a substantial change to the health services of  
150 the facility.

151 (2) Before a health care facility acquires major medical  
152 equipment to be used solely for research, offers a health  
153 service solely for research, or obligates a capital expenditure  
154 solely for research, such health care facility shall notify in  
155 writing the state agency of such facility's intent and the use  
156 to be made of such medical equipment, health service, or  
157 capital expenditure.

158 (3) If major medical equipment is acquired, a health service  
159 is offered, or a capital expenditure is obligated and a  
160 certificate of need is not required for such acquisition, offer-  
161 ing, or obligation as provided in subdivision (1), subsection  
162 (c) of this section, such equipment or service or equipment  
163 or facilities acquired through the obligation of such capital  
164 expenditure may not be used in such a manner as to have  
165 the effect or to make a change described in subparagraphs (A),  
166 (B), and (C), subdivision (1), subsection (c) of this section  
167 unless the state agency issues a certificate of need approving  
168 such use.

169 (4) For purposes of this subsection, the term "solely for  
170 research" includes patient care provided on an occasional and  
171 irregular basis and not as part of a research program.

172 (d) (1) The state agency may adopt regulations pursuant to  
173 section eight of this article to specify the circumstances under  
174 which a certificate of need may not be required for the obliga-  
175 tion of a capital expenditure to acquire, either by purchase or  
176 under lease or comparable arrangement, an existing health  
177 care facility: *Provided*, That a certificate of need shall be  
178 required for the obligation of a capital expenditure to  
179 acquire, either by purchase or under lease or comparable ar-  
180 rangement, an existing health care facility if:

181 (A) The notice required by subdivision (2), subsection  
182 (d) of this section is not filed in accordance with that sub-  
183 division with respect to such acquisition; or (B) the state  
184 agency finds, within thirty days after the date it receives a  
185 notice in accordance with subdivision (2), subsection (d)  
186 of this section with respect to such acquisition, that the  
187 services or bed capacity of the facility will be changed by  
188 reason of said acquisition.

189       (2) Before any person enters into a contractual arrange-  
190 ment to acquire an existing health care facility, such person  
191 shall notify the state agency of his intent to acquire the facility  
192 and of the services to be offered in the facility and its bed  
193 capacity. Such notice shall be made in writing and shall be  
194 made at least thirty days before contractual arrangements are  
195 entered into to acquire the facility with respect to which  
196 the notice is given. The notice shall contain all information  
197 the state agency requires in accordance with subsections (e)  
198 and (u), section seven of this article.

199       (e) The state agency shall adopt regulations, pursuant  
200 to section eight of this article, wherein criteria are established  
201 to exempt from review the addition of certain health services,  
202 not associated with a capital expenditure, that are projected  
203 to entail annual operating costs of less than the expenditure  
204 minimum for annual operating costs. For purposes of this  
205 subsection, "expenditure minimum for annual operating costs"  
206 means seventy-five thousand dollars for the twelve-month  
207 period beginning the first day of October, one thousand nine  
208 hundred seventy-nine, and for each twelve-month period  
209 thereafter, the state agency may, by regulations adopted  
210 pursuant to section eight of this article, adjust the expendi-  
211 ture minimum for annual operating costs to reflect the impact  
212 of inflation.

**§16-2D-5. Authority of state health planning and development  
agency; assistance of health systems agencies and other  
persons; cooperation with statewide health coordinat-  
ing council and health systems agencies; strengthen-  
ing competition and allocating supply of health serv-  
ices.**

1       (a) The state agency is hereby empowered to administer  
2 the certificate of need program as provided by this article.

3       (b) The state agency shall cooperate with the statewide  
4 health coordinating council and the designated health systems  
5 agencies for health service areas located in whole or in part  
6 within the state in developing rules and regulations for the  
7 certificate of need program to the extent appropriate for the  
8 achievement of efficiency in their reviews and consistency  
9 in criteria for such reviews.

10 (c) The state agency may seek the advice and assistance  
11 of other persons, organizations, and other state agencies in  
12 the performance of the state agency's responsibilities under this  
13 article.

14 (d) For health services for which competition appropriately  
15 allocates supply consistent with health systems plans and the  
16 state health plan, the state agency shall, in the performance  
17 of its functions under this article, give priority, where ap-  
18 propriate to advance the purposes of quality assurance, cost  
19 effectiveness, and access, to actions which would strengthen  
20 the effect of competition on the supply of such services.

21 (e) For health services for which competition does not  
22 or will not appropriately allocate supply consistent with  
23 health systems plans and the state health plan, the state  
24 agency shall, in the exercise of its functions under this  
25 article, take actions, where appropriate to advance the pur-  
26 poses of quality assurance, cost effectiveness, and access and  
27 the other purposes of this article, to allocate the supply of such  
28 services.

**§16-2D-6. Minimum criteria for certificate of need reviews; prom-  
ulgation of regulations regarding review criteria.**

1 (a) Except as provided in subsections (f) and (g) of  
2 section nine of this article, in making its determination as  
3 to whether a certificate of need shall be issued, the state  
4 agency shall, at a minimum, consider all of the following  
5 criteria that are applicable, but in the case of a health  
6 maintenance organization or an ambulatory care facility or  
7 health care facility controlled, directly or indirectly, by  
8 a health maintenance organization or combination of health  
9 maintenance organizations, the criteria considered shall be  
10 only those set forth in subdivision (12) of this subsection:

11 (1) The recommendation of the designated health systems  
12 agency for the health service area in which the proposed  
13 new institutional health service is to be located;

14 (2) The relationship of the health services being reviewed  
15 to the state health plan and to the applicable health systems  
16 plan and annual implementation plan adopted by the designated

17 health systems agency for the health service area in which  
18 the proposed new institutional health service is to be located;

19 (3) The relationship of services reviewed to the long-  
20 range development plan of the person providing or proposing  
21 such services;

22 (4) The need that the population served or to be served  
23 by such services has for such services proposed to be offered  
24 or expanded, and the extent to which all residents of the  
25 area, and in particular low income persons, racial and ethnic  
26 minorities, women, handicapped persons, other medically  
27 underserved population, and the elderly, are likely to have  
28 access to those services;

29 (5) The availability of less costly or more effective al-  
30 ternative methods of providing such services to be offered,  
31 expanded, reduced, relocated or eliminated;

32 (6) The immediate and long-term financial feasibility  
33 of the proposal as well as the probable impact of the pro-  
34 posal on the costs of and charges for providing health services  
35 by the person proposing the new institutional health service;

36 (7) The relationship of the services proposed to the  
37 existing health care system of the area in which such services  
38 are proposed to be provided;

39 (8) In the case of health services proposed to be provided,  
40 the availability of resources, including health care providers,  
41 management personnel, and funds for capital and operating  
42 needs, for the provision of the services proposed to be pro-  
43 vided and the need for alternative uses of these resources as  
44 identified by the state health plan, applicable health systems  
45 plan and annual implementation plan;

46 (9) The appropriate and nondiscriminatory utilization  
47 of existing and available health care providers;

48 (10) The relationship, including the organizational rela-  
49 tionship, of the health services proposed to be provided to  
50 ancillary or support services;

51 (11) Special needs and circumstances of those entities  
52 which provide a substantial portion of their services or re-

53 sources, or both, to individuals not residing in the health service  
54 areas in which the entities are located or in adjacent health  
55 service areas. Such entities may include medical and other  
56 health professional schools, multidisciplinary clinics and spe-  
57 cialty centers.

58 (12) To the extent not precluded by subdivision (1),  
59 subsection (f), section nine of this article, the special needs and  
60 circumstances of health maintenance organizations. These  
61 needs and circumstances shall be limited to:

62 (A) The needs of enrolled members and reasonably  
63 anticipated new members of the health maintenance or-  
64 ganization for the health services proposed to be provided  
65 by the organization; and

66 (B) The availability of the new health services from  
67 nonhealth maintenance organization providers or other health  
68 maintenance organizations in a reasonable and cost-effective  
69 manner which is consistent with the basic method of opera-  
70 tion of the health maintenance organization. In assessing the  
71 availability of these health services from these providers,  
72 the agency shall consider only whether the services from these  
73 providers:

74 (i) Would be available under a contract of at least five  
75 years duration;

76 (ii) Would be available and conveniently accessible  
77 through physicians and other health professionals associated  
78 with the health maintenance organization;

79 (iii) Would cost no more than if the services were pro-  
80 vided by the health maintenance organization; and

81 (iv) Would be available in a manner which is administra-  
82 tively feasible to the health maintenance organization;

83 (13) The special needs and circumstances of biomedical  
84 and behavioral research projects which are designed to meet  
85 a national need and for which local conditions offer special  
86 advantages;

87 (14) In the case of a reduction or elimination of a service,  
88 including the relocation of a facility or a service, the need that

89 the population presently served has for the service, the extent  
90 to which that need will be met adequately by the proposed  
91 relocation or by alternative arrangements, and the effect of the  
92 reduction, elimination or relocation of the service on the  
93 ability of low income persons, racial and ethnic minorities,  
94 women, handicapped persons, and other medically underserved  
95 population, and the elderly, to obtain needed health care;

96 (15) In the case of a construction project: (A) The  
97 cost and methods of the proposed construction, including  
98 the costs and methods of energy provision and (B) the  
99 probable impact of the construction project reviewed on the  
100 costs of providing health services by the person proposing  
101 such construction project and on the costs and charges to  
102 the public of providing health services by other persons;

103 (16) In the case of health services proposed to be pro-  
104 vided, the effect of the means proposed for the delivery  
105 of proposed health services on the clinical needs of health  
106 professional training programs in the area in which such  
107 services are to be provided;

108 (17) In the case of health services proposed to be pro-  
109 vided, if such services are to be available in a limited number  
110 of facilities, the extent to which the schools in the area for  
111 health professions will have access to the services for training  
112 purposes;

113 (18) In the case of health services proposed to be pro-  
114 vided, the extent to which such proposed services will be  
115 accessible to all the residents of the area to be served by such  
116 services;

117 (19) In accordance with section five of this article, the  
118 factors influencing the effect of competition on the supply  
119 of the health services being reviewed;

120 (20) Improvements or innovations in the financing and  
121 delivery of health services which foster competition, in ac-  
122 cordance with section five of this article, and serve to pro-  
123 mote quality assurance and cost effectiveness;

124 (21) In the case of health services or facilities proposed  
125 to be provided, the efficiency and appropriateness of the



126 use of existing services and facilities similar to those pro-  
127 posed;

128 (22) In the case of existing services or facilities, the  
129 quality of care provided by such services or facilities in  
130 the past;

131 (23) In the case where an application is made by an  
132 osteopathic or allopathic facility for a certificate of need  
133 to construct, expand, or modernize a health care facility,  
134 acquire major medical equipment, or add services, the need  
135 for that construction, expansion, modernization, acquisition  
136 of equipment, or addition of services shall be considered on  
137 the basis of the need for and the availability in the com-  
138 munity of services and facilities for osteopathic and allopathic  
139 physicians and their patients. The state agency shall con-  
140 sider the application in terms of its impact on existing and  
141 proposed institutional training programs for doctors of osteo-  
142 pathy and medicine at the student, internship, and residency  
143 training levels;

144 (24) The special circumstances of health care facilities  
145 with respect to the need for conserving energy;

146 (25) The contribution of the proposed service in meeting  
147 the health related needs of members of medically underserved  
148 populations which have traditionally experienced difficulties  
149 in obtaining equal access to health services, particularly those  
150 needs identified in the state health plan, applicable health  
151 systems plan and annual implementation plan, as deserving of  
152 priority. For the purpose of determining the extent to which  
153 the proposed service will be accessible, the state agency  
154 shall consider:

155 (A) The extent to which medically underserved popula-  
156 tions currently use the applicant's services in comparison to  
157 the percentage of the population in the applicant's service area  
158 which is medically underserved, and the extent to which  
159 medically underserved populations are expected to use the  
160 proposed services if approved;

161 (B) The performance of the applicant in meeting its  
162 obligation, if any, under any applicable federal regulations

163 requiring provision of uncompensated care, community service,  
164 or access by minorities and handicapped persons to programs  
165 receiving federal financial assistance, including the existence  
166 of any civil rights access complaints against the appli-  
167 cant;

168 (C) The extent to which medicare, medicaid and medically  
169 indigent patients are served by the applicant; and

170 (D) The extent to which the applicant offers a range of  
171 means by which a person will have access to its services, in-  
172 cluding, but not limited to, outpatient services, admission by  
173 house staff and admission by personal physician.

174 (26) The existence of a mechanism for soliciting con-  
175 sumer input into the health care facility's decision making  
176 process.

177 (b) The state agency may include additional criteria  
178 which it prescribes by regulations adopted pursuant to section  
179 eight of this article.

180 (c) Criteria for reviews may vary according to the pur-  
181 pose for which a particular review is being conducted or the  
182 types of health services being reviewed.

183 (d) An application for a certificate of need may not be  
184 made subject to any criterion not contained in this article  
185 or not contained in regulations adopted pursuant to section  
186 eight of this article.

187 (e) In the case of any proposed new institutional health  
188 service, the state agency may not grant a certificate of need  
189 under its certificate of need program unless, after considera-  
190 tion of the appropriateness of the use of existing facilities  
191 providing services similar to those being proposed, the state  
192 agency makes, in addition to findings required in section  
193 nine of this article, each of the following findings in writing:

194 (1) That superior alternatives to such services in terms of  
195 cost, efficiency and appropriateness do not exist and the  
196 development of such alternatives is not practicable; (2) that  
197 existing facilities providing services similar to those proposed  
198 are being used in an appropriate and efficient manner; (3)  
199 that in the case of new construction, alternatives to new con-

200 struction, such as modernization or sharing arrangements,  
201 have been considered and have been implemented to the  
202 maximum extent practicable; (4) that patients will experience  
203 serious problems in obtaining care of the type proposed in the  
204 absence of the proposed new service; and (5) that in the  
205 case of a proposal for the addition of beds for the provision of  
206 skilled nursing or intermediate care services, the addition  
207 will be consistent with the plans of other agencies of the state  
208 responsible for the provision and financing of long-term  
209 care facilities or services including home health services.

**§16-2D-7. Procedures for certificate of need reviews.**

1 (a) Prior to submission of an application for a certificate  
2 of need, the state agency shall require the submission of long-  
3 range plans by health care facilities with respect to the  
4 development of proposals subject to review under this article.  
5 The plans shall be in such form and contain such information  
6 as the state agency shall require.

7 (b) An application for a certificate of need shall be  
8 submitted to the state agency prior to the offering or develop-  
9 ment of all new institutional services within this state. Per-  
10 sons proposing new institutional health services shall submit  
11 letters of intent not less than fifteen days prior to submitting  
12 an application. The letters of intent shall be of such detail  
13 as specified by the state agency.

14 (c) The state agency may adopt regulations pursuant to  
15 section eight of this article for:

16 (1) Provision for applications, and recommendations from  
17 the health systems agencies, to be submitted in accordance  
18 with a timetable established by the state agency;

19 (2) Provision for such reviews to be undertaken in a timely  
20 fashion; and

21 (3) Except for proposed new institutional health services  
22 which meet the requirements for consideration under sub-  
23 section (g), section nine of this article with regard to the  
24 elimination or prevention of certain imminent safety hazards  
25 or to comply with certain licensure or accreditation standards,  
26 provision for all completed applications pertaining to similar

27 types of services, facilities or equipment to be considered  
28 in relation to each other, at least twice a year.

29 (d) An application for a certificate of need shall specify  
30 the time the applicant will require to make such service or  
31 equipment available or to obligate such expenditure and a  
32 timetable for making such service or equipment available or  
33 obligating such expenditure.

34 (e) The application shall be in such form and contain  
35 such information as the state agency shall establish by rule  
36 or regulation, but requests for information shall be limited  
37 to only that information which is necessary for the state  
38 agency to perform the review.

39 (f) Within fifteen days of receipt of application, the state  
40 agency shall determine if the application is complete. The  
41 state agency shall seek the advice of the designated health  
42 systems agency for the area in which the proposed new insti-  
43 tutional health service will be located to determine if the  
44 application is complete and the state agency may request addi-  
45 tional information from the applicant.

46 (g) The state agency shall provide timely written notice to  
47 the applicant and to all affected persons of the beginning of  
48 the review, and to any person who has asked the state agency  
49 to place the person's name on a mailing list maintained by  
50 the state agency. Notification shall include the proposed  
51 schedule for review, the period within which a public hearing  
52 during the course of the review may be requested by affected  
53 persons, which period may not be less than thirty days from  
54 the date of the written notification of the beginning of the  
55 review required by this section, and the manner in which  
56 notification will be provided of the time and place of any  
57 public hearing so requested. For the purposes of this sub-  
58 section, the date of notification is the date on which the notice  
59 is sent or the date on which the notice appears in a newspaper  
60 of general circulation, whichever is later.

61 (h) Written notification to members of the public and  
62 third-party payers may be provided through newspapers of  
63 general circulation in the applicable health service area and  
64 public information channels; notification to all other affected

65 persons shall be by mail which may be as part of a news-  
66 letter.

67 (i) If, after a review has begun the state agency or the  
68 health systems agency requires the person subject to the  
69 review to submit additional information respecting the sub-  
70 ject of the review, such person shall be provided at least  
71 fifteen days to submit the information and the state agency  
72 shall, at the request of such person, extend the review  
73 period by fifteen days. This extension applies to all other  
74 applications which have been considered in relation to the  
75 application for which additional information is required.

76 (j) The state agency shall seek the recommendation of  
77 the designated health systems agency for the health service  
78 area in which the proposed new institutional health service  
79 is to be located as to whether a certificate of need should  
80 be issued. The state agency shall assist the designated health  
81 systems agency in the review of applications by supplying  
82 information and data on those proposed new institutional  
83 services which have statewide implications.

84 (k) The state agency shall adopt schedules for reviews  
85 which provide that no review may, to the extent practicable,  
86 take longer than ninety days from the date that notification,  
87 as described under subsection (g) of this section, is sent to  
88 the applicant to the date of the final decision of the state  
89 agency, and in the case of expedited applications, may by  
90 regulations adopted pursuant to section eight of this article  
91 provide for a shortened review period.

92 (l) The state agency shall adopt criteria for determining  
93 when it would not be practicable to complete a review within  
94 ninety days.

95 (m) The schedule shall set forth the period within which  
96 the health systems agency shall complete its review and  
97 provide its recommendation with respect to such new in-  
98 stitutional health service to the state agency: *Provided, That*  
99 the period allotted by the state agency to a health systems  
100 agency for completion of its review and submission of its  
101 recommendations may not be less than sixty days, except with  
102 the written consent of the health systems agency.

103 (n) The state agency shall provide a public hearing in the  
104 course of agency review if requested by any affected person  
105 and the state agency may on its own initiate such a public  
106 hearing.

107 (1) The state agency shall, prior to such hearing, provide  
108 notice of such hearing and shall conduct such hearing in  
109 accordance with administrative hearing requirements in sec-  
110 tion five of chapter twenty-nine-a of this code and its procedure  
111 adopted pursuant to this section.

112 (2) In a hearing any person has the right to be represented  
113 by counsel and to present oral or written arguments and  
114 evidence relevant to the matter which is the subject of the  
115 hearing. Any person affected by the matter which is the  
116 subject of the hearing may conduct reasonable questioning  
117 of persons who make factual allegations relevant to such  
118 matter.

119 (3) The state agency shall maintain a verbatim record of  
120 the hearing.

121 (4) After the commencement of a hearing on the applicant's  
122 application and before a decision is made with respect to it,  
123 there may be no ex parte contacts between (a) the applicant  
124 for the certificate of need, any person acting on behalf of  
125 the applicant or holder of a certificate of need, or any person  
126 opposed to the issuance of a certificate for the applicant and  
127 (b) any person in the state agency who exercises any responsi-  
128 bility respecting the application.

129 (5) The state agency may not impose fees for such a  
130 public hearing.

131 (o) If a public hearing is not conducted during the review  
132 of a new institutional health service, the state agency may,  
133 by regulations adopted pursuant to section eight of this article,  
134 provide for a file closing date during the review period  
135 after which date no other factual information or evidence  
136 may be considered in the determination of the application  
137 for the certificate of need, except that the file closing date  
138 shall not be set prior to the date the state agency receives  
139 the recommendation of the applicable health systems agency

140 with respect to the proposed new institutional health service  
141 if the state agency receives such recommendation before the  
142 sixty-first day for the review. A detailed itemization of  
143 documents in the state agency file on a proposed new insti-  
144 tutional health service shall, on request, be made available by  
145 the state agency at any time before the file closing date.

146 (p) The extent of additional information received by the  
147 state agency from the applicant for a certificate of need  
148 after a review has begun on the applicant's proposed new  
149 institutional health service, with respect to the impact on  
150 such new institutional health service and additional informa-  
151 tion which is received by the state agency from the applicant  
152 after the state agency has received the applicable health systems  
153 agency's recommendation, may be cause for the state agency  
154 to determine the application to be a new proposal, subject  
155 to a new review cycle.

156 (q) The state agency shall in timely fashion notify, upon  
157 request, providers of health services and other persons subject  
158 to review under this article of the status of the state agency  
159 review of new institutional health services subject to review,  
160 findings made in the course of such review, and other appro-  
161 priate information respecting such review.

162 (r) The state agency shall prepare and publish, at least  
163 annually, reports of reviews completed and being conducted,  
164 with general statements about the status of each review still  
165 in progress and the findings and rationale for each completed  
166 review since the publication of the last report.

167 (s) The state agency shall provide for access by the  
168 general public to all applications reviewed by the state agency  
169 and to all other pertinent written materials essential to agency  
179 review.

180 (t) (1) Any person may request in writing a public hearing  
181 for purposes of reconsideration of a state agency decision.  
182 No fees may be imposed by the state agency for the hearing.  
183 For purposes of this section, a request for a public hearing  
184 for purposes of reconsideration shall be deemed to have  
185 shown good cause if, in a detailed statement, it:

186 (A) Presents significant, relevant information not previously  
187 considered by the state agency, and demonstrates that with  
188 reasonable diligence the information could not have been  
189 presented before the state agency made its decision;

190 (B) Demonstrates that there have been significant changes  
191 in factors or circumstances relied upon by the state agency  
192 in reaching its decision;

193 (C) Demonstrates that the state agency has materially  
194 failed to follow its adopted procedures in reaching its decision;  
195 or

196 (D) Provides such other bases for a public hearing as  
197 the state agency determines constitutes good cause.

198 (2) To be effective a request for such a hearing shall be  
199 received within thirty days after the date upon which all  
200 parties received notice of the state agency decision, and  
201 the hearing shall commence within thirty days of receipt of the  
202 request.

203 (3) Notification of such public hearing shall be sent,  
204 prior to the date of the hearing, to the person requesting the  
205 hearing, the person proposing the new institutional health  
206 service, and the health systems agency for the health service  
207 area in which the new institutional health service is proposed  
208 to be offered or developed, and shall be sent to others upon  
209 request.

210 (4) The state agency shall hold public reconsideration  
211 hearings in accordance with the provisions for administrative  
212 hearings contained in:

213 (A) Its adopted procedures;

214 (B) Ex parte contact provisions of subdivision (4), sub-  
215 section (n) of this section; and

216 (C) The administrative procedures for contested cases con-  
217 tained in article five of chapter twenty-nine-a of this code.

218 (7) The state agency shall make written findings which  
219 state the basis for its decision within forty-five days after  
220 the conclusion of such hearing.



221 (8) A decision of the state agency following a reconsidera-  
222 tion hearing shall be considered a decision of the state agency  
223 for purposes of sections nine and ten of this article and for  
224 purposes of the notification of the status of review, findings  
225 and annual report provisions of subsections (q) and (r) of  
226 this section.

227 (u) The state agency may adopt regulations pursuant to  
228 section eight of this article for reviews and such regulations  
229 may vary according to the purpose for which a particular  
230 review is being conducted or the type of health services  
231 being reviewed.

232 (v) Notwithstanding other provisions of this article, the  
233 state agency shall adopt rules and regulations for determining  
234 when there is an application which warrants expedited review.  
235 If procedures adopted by the state agency to handle expedited  
236 applications do not conform to the provisions of this article,  
237 such procedures shall be approved by the federal secretary  
238 of health and human services and shall be adopted as regula-  
239 tions pursuant to section eight of this article.

**§16-2D-8. Agency to promulgate additional rules and regulations.**

1 (a) The state agency is hereby empowered to promulgate  
2 additional rules and regulations:

3 (1) To carry out the provisions of this article; and

4 (2) To assure hospitals' compliance with requests for in-  
5 formation concerning rates charged for each of the twenty-five  
6 most frequently used hospital services in the state including the  
7 average semiprivate and private room rates.

8 (b) All rules and regulations shall be promulgated pursuant  
9 to chapter twenty-nine-a of this code and as described herein.  
10 In addition, before adopting proposed rules and regulations  
11 the state agency shall give interested persons an opportunity to  
12 offer written comments on the rules and regulations, or any  
13 revisions thereof, which it proposes to adopt, as follows:

14 (1) The state agency shall distribute copies of its proposed  
15 review rules and regulations, and proposed revisions thereof,  
16 to statewide health agencies and organizations, the statewide

17 health coordinating council, and each health systems agency  
18 for a health service area located in whole or in part within  
19 the state and any agency which establishes rates for health  
20 care facilities in the state.

21 (2) The state agency shall publish, in at least one news-  
22 paper in each planning and development region in this state,  
23 a notice stating that rules and regulations for review of certi-  
24 ficate of need applications or any revisions thereof, have been  
25 proposed for adoption and are available at specified addresses  
26 for inspection and copying by interested persons. In addition,  
27 notice may be given through other public information channels;

28 (3) The state agency shall distribute copies of its adopted  
29 review rules and regulations, and any revisions thereof, to the  
30 agencies and organizations specified in this section and to the  
31 secretary of health and human services, and shall provide  
32 such copies to other persons upon request.

**§16-2D-9. State agency to render final decision; issue certificate of  
need; write findings; specify capital expenditure  
maximum.**

1 (a) Only the state agency, or the appropriate administra-  
2 tive or judicial review body, may issue, deny or withdraw  
3 certificates of need, grant exemptions from certificate of need  
4 reviews, or determine that certificate of need reviews are not  
5 required.

6 (b) Except as provided in subsection (f) of this section, a  
7 certificate of need may only be issued if the proposed new in-  
8 stitutional health service is:

9 (1) Found to be needed; and

10 (2) Except in emergency circumstances that pose a threat  
11 to public health, consistent with the state health plan: *Pro-*  
12 *vided*, That if a health care facility which is controlled, direct-  
13 ly or indirectly, by a health maintenance organization applies  
14 for a certificate of need for a proposed new institutional health  
15 service, the state agency may not disapprove the application  
16 solely because such an institutional health service is not dis-  
17 cussed in the state health plan, applicable health systems plan,  
18 or annual implementation plan.

19 (c) The state agency shall render a final decision on every  
20 application for a certificate of need or application for exemp-  
21 tion in the form of an approval, a denial, an approval with  
22 conditions. Any decision of the state agency with respect to a  
23 certificate of need, or exemption, shall be based solely on:

24 (1) The review of the state agency conducted in accordance  
25 with procedures and criteria in this article and in regulations  
26 adopted pursuant to section eight of this article; and

27 (2) The record established in administrative proceedings  
28 held with respect to the certificate of need or exemption.

29 (d) Approval with conditions does not give the state agency  
30 authority to mandate new institutional health services not  
31 proposed by the health care facility or health maintenance  
32 organization. Issuance of a certificate of need or exemption  
33 may not be made subject to any condition unless the con-  
34 dition directly relates to criteria in this article or in rules and  
35 regulations adopted pursuant to section eight of this article.

36 (e) (1) For each proposed new institutional health service  
37 it approves, the state agency shall, in addition to the written  
38 findings required in subsection (e), section six of this article,  
39 make a written finding, which shall take into account the  
40 current accessibility of the facility as a whole, on the extent  
41 to which the new institutional health service will meet the  
42 criteria in subdivisions (4), (14), and (25), subsection (a),  
43 section six of this article regarding the needs of medically  
44 underserved population, except in the following cases:

45 (A) Where the proposed new institutional health service  
46 is one described in subsection (g) of this section to eliminate  
47 or prevent certain imminent safety hazards or to comply with  
48 certain licensure or accreditation standards; or

49 (B) Where the new institutional health service is a proposed  
50 capital expenditure not directly related to the provision of  
51 health services or to beds or major medical equipment; or

52 (C) Where the new institutional health service is proposed  
53 by or on behalf of a health care facility which is controlled,  
54 directly or indirectly, by a health maintenance organization.

55 (2) If the state agency disapproves a proposed new insti-  
56 tutional health service for failure to meet the needs of medi-  
57 cally underserved populations, it shall so state in a written  
58 finding.

59 (f) (1) Notwithstanding review criteria in subdivision (12),  
60 subsection (a), section six of this article, if a health care fa-  
61 cility which is controlled, directly or indirectly, by a health  
62 maintenance organization applies for a certificate of need,  
63 such application shall be approved by the state agency if the  
64 state agency finds, in accordance with criteria prescribed by  
65 the state agency by regulations adopted pursuant to section  
66 eight of this article, that:

67 (A) Approval of such application is required to meet the  
68 needs of the members of the health maintenance organization  
69 and of the new members which such organization can reason-  
70 ably be expected to enroll; and

71 (B) The health maintenance organization is unable to pro-  
72 vide, through services or facilities which can reasonably be ex-  
73 pected to be available to the organization, its institutional  
74 health services in a reasonable and cost-effective manner which  
75 is consistent with the basic method of operation of the organi-  
76 zation and which makes such services available on a long-  
77 term basis through physicians and other health professionals  
78 associated with it.

79 (2) Except as provided in subdivision (1), subsection (b),  
80 section four of this article, a health care facility, or any part  
81 thereof, or medical equipment with respect to which a certi-  
82 ficate of need was issued under this subsection may not be sold  
83 or leased and a controlling interest in such facility or equip-  
84 ment or in a lease of such facility or equipment may not be  
85 acquired unless the state agency issues a certificate of need  
86 approving the sale, acquisition or lease.

87 (g) (1) Notwithstanding review criteria in section six of this  
88 article, an application for a certificate of need shall be ap-  
89 proved, if the state agency finds that the facility or service with  
90 respect to which such capital expenditure is proposed to be  
91 made is needed and that the obligation of such capital ex-

92 penditure is consistent with the state health plan, for a capital  
93 expenditure which is required:

94 (A) To eliminate or prevent imminent safety hazards as  
95 defined by federal, state or local fire, building or life safety  
96 codes or regulations; or

97 (B) To comply with state licensure standards; or

98 (C) To comply with accreditation or certification stand-  
99 ards, compliance with which is required to receive reimburse-  
100 ments under Title XVIII of the social security act or pay-  
101 ments under the state plan for medical assistance approved  
102 under TitleXIX of such act.

103 (2) An application for a certificate of need approved un-  
104 der this subsection shall be approved only to the extent that  
105 the capital expenditure is required to eliminate or prevent the  
106 hazards described in subparagraph (A), subdivision (1), sub-  
107 section (q), or to comply with the standards described in  
108 either subparagraph (B) or (C) of subdivision (1) subsection  
109 (g), of this section.

110 (h) (1) The state agency shall send its decision along with  
111 written findings to the person proposing the new institutional  
112 health service or exemption and to the health systems agency  
113 for the health service area in which the new service is pro-  
114 posed to be offered or developed and shall make it available  
115 to others upon request.

116 (2) In the case of a new institutional health service pro-  
117 posed by an health maintenance organization, the state agency  
118 shall send the written findings to the appropriate regional  
119 office of the federal department of health and human ser-  
120 vices at the time they are sent to the applicant.

121 (3) In any decision where the state agency finds that a  
122 proposed new institutional health service does not satisfy the  
123 criteria in subdivisions (4), (14), and (25), subsection (a), sec-  
124 tion six, of this article regarding the needs of medically under-  
125 served population, it shall so notify in writing the applicant  
126 and the appropriate regional office of the federal department  
127 of health and human services.

128 (i) In the case of a final decision to approve or approve  
129 with conditions a proposal for a new institutional health service,  
130 the state agency shall issue a certificate of need to the person  
131 proposing the new institutional health service.

132 (j) The state agency shall specify in the certificate the  
133 maximum amount of capital expenditures which may be ob-  
134 ligated under such certificate. The state agency shall prescribe  
135 the method used to determine capital expenditure maximums  
136 and shall adopt regulations pursuant to section eight of this  
137 article for the review of approved new institutional health ser-  
138 vices for which the capital expenditure maximum is exceeded  
139 or is expected to be exceeded.

140 (k) If the state agency makes a decision regarding a pro-  
141 posed new institutional health service which is inconsistent  
142 with a recommendation made with respect thereto by the ap-  
143 plicable health systems agency or is inconsistent with the goals  
144 of the applicable health systems plan or the priorities of the  
145 applicable annual implementation plan, the state agency shall,  
146 if its decision does not include a written, detailed statement  
147 of the reasons for the inconsistency, provide such a statement  
148 to such health systems agency.

149 (l) If the state agency fails to make a decision within the  
150 time period specified for the review, the applicant may, within  
151 one year following the expiration of such period, bring an  
152 action, at the election of the applicant, in either the circuit  
153 court of Kanawha County, or with the judge thereof in vaca-  
154 tion, or in the circuit court of the county in which the applicant  
155 or any one of the applicants resides or does business, or with  
156 the judge thereof in vacation to require the state agency to ap-  
157 prove or disapprove the application. An application for a pro-  
158 posed new institutional health service or exemption may not be  
159 approved or denied by the circuit court solely because the  
160 state agency failed to reach a decision.

**§16-2D-10. Appeal of certificate of need decisions.**

1 (a) A final decision of the state agency, including a state  
2 agency decision issued after a reconsideration, if such recon-  
3 sideration was requested and granted under subsection (t),

4 section seven, of this article, and the record upon which it  
5 was made, shall, upon request of any affected person, or the  
6 applicable health systems agency if the decision is inconsistent  
7 with a recommendation made by the applicable health systems  
8 agency to the state agency with respect to the certificate of  
9 need, be reviewed by an agency of the state (other than the  
10 state agency) designated by the governor. To be effective, such  
11 request shall be received within thirty days after the date  
12 upon which all parties received notice of the state agency de-  
13 cision, and the hearing shall commence within thirty days of  
14 receipt of the request.

15 (b) To the extent not inconsistent with this section, for the  
16 purpose of administrative reviews of state agency decisions, the  
17 review agency shall conduct its proceedings in conformance  
18 with the West Virginia rules of civil procedure for trial courts  
19 of record and the local rules for use in the civil courts of  
20 Kanawha County and shall review appeals in accordance with  
21 the provisions governing the judicial review of contested ad-  
22 ministrative cases in section (4), article five, chapter twenty-  
23 nine-a of this code, notwithstanding the exceptions of section  
24 five, article five, chapter twenty-nine-a of this code.

25 (c) The decision of the reviewing agency shall be made  
26 in writing within forty-five days after the conclusion of such  
27 hearing.

28 (d) The written findings of the review agency shall be sent  
29 to the person who requested the review, to the person proposing  
30 the new institutional health service, to the health systems  
31 agency requesting a review and to the state agency, and shall  
32 be made available by the state agency to others upon request.

33 (e) The decision of the reviewing agency shall be considered  
34 the final decision of the state agency; however, the reviewing  
35 agency may remand the matter to the state agency for further  
36 action or consideration.

37 (f) Upon the entry of a final decision by the reviewing  
38 agency the designated health system agency, if the decision re-  
39 specting the certificate of need is inconsistent with a recom-  
40 mendation made by that health systems agency to the state  
41 agency with respect to the certificate of need, and any other

42 “person adversely affected by the review” have standing in and  
43 may within thirty days after the date upon which all parties  
44 received notice of the decision of the review agency take an  
45 appeal at the election of the petitioner, in either the circuit court  
46 of Kanawha County, or in the circuit court of the county in  
47 which the petitioner or any of the petitioners resides or does  
48 business, from any decision of the state agency granting, with  
49 or without conditions, denying or withdrawing a certificate  
50 of need or exemption. The decision of the review agency shall  
51 be reviewed by such circuit court in accordance with the pro-  
52 visions for the judicial review of administrative decisions con-  
53 tained in section four, article five, chapter twenty-nine-a of this  
54 code. For the purposes of this subsection, “person adversely  
55 affected by the review” includes the state agency, any person  
56 who meets the definition of affected person in section two of  
57 this article, and any person who participated in the proceeding  
58 before the state agency.

**§16-2D-11. Nontransference, time period compliance and with-  
drawal of certificate of need.**

1 (a) A certificate of need is nontransferable and shall be  
2 valid for a maximum of one year from the date of issuance.  
3 Upon the expiration of the certificate or during the certifica-  
4 tion period the person proposing the new institutional health  
5 service shall provide the state agency such information on  
6 the development of the project as the state agency may request.  
7 The state agency shall periodically monitor capital expendi-  
8 tures obligated under certificates, determine whether suf-  
9 ficient progress is being made in meeting the timetable  
10 specified in the approved application for the certificate  
11 and whether there has been compliance with the application  
12 and any conditions of certification. The state agency shall  
13 take in account recommendations made by the health systems  
14 agency in making its determination. The certificate of need  
15 may be extended by the state agency for additional periods  
16 of time as are reasonably necessary to expeditiously com-  
17 plete the project. A certificate of need may no longer be  
18 in effect, and may no longer be required, after written  
19 notice of substantial compliance with the approved application  
20 and any conditions of certification is issued to the applicant,



21 after the activity is undertaken for which the certificate  
22 of need was issued, and after the state agency is provided  
23 written notice of such undertaking. The person proposing  
24 a new institutional health service may not be issued a license  
25 therefor until the state agency has issued a written notice of  
26 substantial compliance with the approved application and  
27 any conditions of certification, nor may a new institutional  
28 health service be used until such person has received such  
29 notice. A new institutional health service may not be found  
30 to be in substantial compliance with the approved application  
31 and any conditions of certification if there is a substantial  
32 change, as defined in regulations adopted pursuant to sub-  
33 section (j), section three, of this article, in the approved new  
34 institutional health service for which change a certificate  
35 of need has not been issued.

36 (b) (1) The certificate of need may be withdrawn by the  
37 state agency for:

38 (A) Insufficient progress in meeting the timetable specified  
39 in the approved application for the certificate and for not  
40 making a good faith effort to meet it in developing the pro-  
41 ject; or

42 (B) Noncompliance with any conditions of certification; or

43 (C) A substantial change, as defined in regulations adopted  
44 pursuant to subsection (j), section three of this article, in an  
45 approved new institutional health service for which change a  
46 certificate of need has not been issued; or

47 (D) Material misrepresentation by an applicant upon which  
48 the state agency relied in making its decision; or

49 (E) Other reasons that may be established by the state  
50 agency in regulations adopted pursuant to section eight of  
51 this article.

52 (2) Any decision of the state agency to withdraw a cer-  
53 tificate of need shall be based solely on:

54 (A) The provisions of this article and on regulations adopted  
55 in accordance with section eight of this article; and

56 (B) The record established in administrative proceedings

57 held with respect to the state agency's proposal to withdraw  
58 the certificate.

59 (3) In the case of a proposed withdrawal of a certificate  
60 of need:

61 (A) After commencement of a hearing on the state agency's  
62 proposal to withdraw a certificate of need and before a  
63 decision is made on withdrawal, there may be no exparte  
64 contacts between (i) the holder of the certificate of need,  
65 any person acting on behalf of the holder, or any person  
66 in favor of the withdrawal and (ii) any person in the state  
67 agency who exercises responsibility respecting withdrawal of  
68 the certificate;

69 (B) The state agency shall follow the notification of review  
70 provisions of subsections (g) and (h), the public hearing  
71 provisions of subsection (n), the notification of the status of  
72 review and findings provisions of subsection (g), the annual  
73 report provisions of subsection (r), and the reconsideration  
74 provisions of subsection (t), all of section seven of this article,  
75 and the conditional decision provisions of subsection (d), the  
76 notification of decision and findings provisions of subsection  
77 (h), and the statement to the applicable health systems agency  
78 provisions of subsection (k), all of section nine of this article;  
79 and

80 (C) Appeals of withdrawals of certificates of need shall  
81 be made pursuant to section ten of this article.

82 (4) A new institutional health service may not be ac-  
83 quired, offered, or developed within this state if a certificate  
84 of need authorizing that new institutional health service  
85 has been withdrawn by the state agency and the acquisition,  
86 offering, or development of the new institutional health service  
87 is subject to review under this article.

**§16-2D-12. Licensing prohibited.**

1 Any person acquiring, offering or developing any new  
2 institutional health service for which a certificate of need  
3 is required under this article without first obtaining a certificate  
4 of need therefor as herein provided, or who violates any of  
5 the provisions of this article is subject to denial or revoca-

6 tion of a license, in whole or in part, to operate such in-  
7 stitutional health service or facility. Upon a showing to the  
8 state agency that any person is offering or developing any  
9 new institutional health service within the meaning of this  
10 article without having first obtained a certificate of need  
11 therefor as provided herein or that such person is otherwise  
12 in violation of the provisions of this article, the state agency  
13 shall provide such person with written notice which notice shall  
14 state the nature of the violation and the time and place at which  
15 such person shall appear to show good cause why its license  
16 should not be revoked or denied, at which time and place such  
17 person shall be afforded a reasonable opportunity to present  
18 testimony and other evidence in support of its position. If,  
19 thereafter, the state agency determines that such person's  
20 license to operate such institutional health service or facility  
21 should be revoked or denied, the state agency shall issue an  
22 order, in writing, to the appropriate responsible licensing  
23 agency of the state, requiring that such person's license to  
24 operate such institutional health service or facility be revoked  
25 or denied, which order shall be binding upon such licensing  
26 agency.

**§16-2D-13. Injunctive relief; civil penalty.**

1 (a) In addition to all other remedies, and aside from  
2 various penalties provided by law, if any person acquires,  
3 offers or develops any new institutional health service for  
4 which a certificate of need is required under this article  
5 without first having a certificate of need therefor as herein  
6 provided, or violates any other provision of this article  
7 or any lawful rule or regulation promulgated thereunder, af-  
8 fected persons, as defined in section two of this article, and the  
9 applicable health systems agency may maintain and the state  
10 agency shall request that the attorney general maintain a civil  
11 action in the circuit court of the county wherein such viola-  
12 tion has occurred, or wherein such person may be found, to  
13 enjoin, restrain or prevent such violation. No injunction bond  
14 shall be required to be filed in any such proceeding.

15 (b) The state agency may assess a civil penalty for viola-  
16 tion of this article. Upon the state agency determining that  
17 there is probable cause to believe that any person is knowingly

18 offering, developing, or has acquired any new institutional  
19 health service subject to certificate of need review without  
20 having first obtained a certificate of need therefor or that any  
21 person is otherwise in violation of the provisions of this article,  
22 or any lawful rule or regulation promulgated thereunder, the  
23 state agency shall provide such person with written notice  
24 which shall state the nature of the alleged violation and the  
25 time and place at which such person shall appear to show  
26 good cause why a civil penalty should not be imposed, at  
27 which time and place such person shall be afforded an op-  
28 portunity to cross-examine the state agency's witnesses and af-  
29 farded an opportunity to present testimony and other evidence  
30 in support of his position. The hearing shall be conducted  
31 in accordance with the administrative hearing provisions of  
32 section four, article five, chapter twenty-nine-a of this code.  
33 If, after reviewing the record of such hearing, the state  
34 agency director determines that such person is in violation of  
35 the certificate of need law, the state agency shall assess a  
36 civil penalty of not less than five hundred dollars nor more than  
37 twenty-five thousand dollars. In determining the amount of  
38 the penalty, the state agency shall consider the degree and  
39 extent of harm caused by the violation and the cost of  
40 rectifying the damage. Any person assessed shall be notified  
41 of the assessment in writing, and the notice shall specify the  
42 reasons for the assessment. If the person assessed fails to pay  
43 the amount of the assessment to the state agency within thirty  
44 days, the attorney general may institute a civil ac-  
45 tion in the circuit court of the county wherein such  
46 violation has occurred, or wherein such person may be found  
47 to recover the amount of the assessment. In any such civil  
48 action, the scope of the court's review of the state agency's  
49 action, which shall include a review of the amount of the  
50 assessment, shall be as provided in section four, article five,  
51 chapter twenty-nine-a of this code for the judicial review of  
52 contested administrative cases.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*R. P. Bayler*  
Chairman Senate Committee

*Jonny E. Whitlow*  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1981.

*Isabel C. Skellis*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Warren R. McIsaac*  
President of the Senate

*Lyle H. Lee, Jr.*  
Speaker House of Delegates

The within *is approved* this the *22*  
day of *April*, 1981.

*John D. Relyea*  
Governor



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SECY. OF STATE