

1 SB440
2 167351-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 30-APR-15

2
3
4
5
6
7
8 SYNOPSIS: This bill would specify that the right of
9 direct appeal to the Alabama Court of Civil Appeals
10 pursuant to Section 22-21-275 of the Code of
11 Alabama 1975, would be the exclusive procedure for
12 an appeal from a decision by the State Health
13 Planning and Development Agency.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Section 22-21-275, Code of Alabama 1975, to
20 specify that the exclusive appeal from a final decision of the
21 State Health Planning and Development Agency would be to the
22 Alabama Court of Civil Appeals.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 22-21-275, Code of Alabama 1975,
25 is amended to read as follows:

26 "§22-21-275.

1 "The SHPDA, pursuant to the provisions of Section
2 22-21-274, shall prescribe by rules and regulations the
3 procedures for review of applications for certificates of need
4 and for issuance of certificates of need. Rules and
5 regulations governing review procedures shall include, but not
6 necessarily be limited to, the following:

7 "(1) Agreement with other review agencies for review
8 procedures consistent with this article and federal
9 regulations.

10 "(2) Application procedures and forms of the
11 application necessary to elicit and provide all necessary
12 information as required by the review criteria.

13 "(3) Establishment of a project review period of 90
14 days from the date the state agency determines that the
15 application is complete and notification thereof is made to
16 the applicant. The rules and regulations may provide for a
17 period of not more than 15 days for determination of the
18 completeness of the application, notification of the beginning
19 and termination dates of the project review period and
20 criteria for determining by the state agency of an extension
21 of the project review period not to exceed 30 days with or
22 without the consent of the applicant. An extension of the
23 review period without limitation may be made with the written
24 consent of the applicant or shall occur automatically without
25 the consent of the applicant or the time period necessary to
26 accommodate referral to an administrative law judge under this
27 chapter and the issuance of a recommended order. All reviews

1 must be completed prior to the termination of the review
2 period. If the state agency does not make a decision within
3 the period of time specified for state agency review, the
4 proposal shall be deemed to have been found not to be needed.

5 "(4) Provision for a "nonsubstantive" review which
6 shall be a modified review applicable to proposals for capital
7 expenditures up to \$500,000.00 and which:

8 "a. Do not result in a substantial change in a
9 service; or

10 "b. Propose equipment to upgrade or expand an
11 existing service; or

12 "c. Increase the bed capacity by not more than 10
13 percent of the existing bed capacity; provided, that such
14 increase in bed capacity is consistent with the State Health
15 Plan.

16 "(5) Public notification of receipt of application,
17 review periods, public hearings, decisions of the state
18 agency, fair hearings if requested and final decisions
19 regarding a certificate of need.

20 "(6) Provisions and procedures for public hearings
21 in the course of agency review on any application for the
22 certificate of need for new institutional health service which
23 requires substantive review. The SHPDA shall make provisions
24 for a public hearing of any contested case before an
25 administrative law judge designated by the Governor, which
26 shall be conducted as a contested hearing pursuant to the
27 requirements of the Alabama Administrative Procedure Act,

1 Chapter 22 of Title 41, and regulations consistent therewith
2 adopted under this article. The fee for the administrative law
3 judge shall be based on an hourly rate approved by the
4 Executive Director of SHPDA on an annual basis and shall be
5 apportioned, on a pro rata basis, between all parties to the
6 contested case hearing, with each party paying its pro rata
7 amount within 30 days of receipt of an itemized invoice from
8 the administrative law judge. Unless extended by agreement of
9 all parties: a. Any public hearing before an administrative
10 law judge pursuant to this article shall begin within 45 days
11 of assignment to the administrative law judge and completed
12 within 90 days; and b. The administrative law judge shall
13 render proposed findings of fact and conclusions of law in
14 accordance with the Administrative Procedure Act within 30
15 days of completion of the transcript. SHPDA shall make
16 provisions that if neither the applicant nor aggrieved party
17 shall have requested the application be heard before an
18 administrative law judge, the application shall be heard
19 before SHPDA at a public hearing. Any aggrieved party to a
20 final decision of SHPDA may appeal the final decision of SHPDA
21 to the Court of Civil Appeals. The right of appeal to the
22 Court of Civil Appeals set forth in this chapter shall be the
23 exclusive means of appeal for a party aggrieved of a final
24 decision by SHPDA, notwithstanding the Administrative
25 Procedure Act, Section 41-22-1, et. seq. An appeal shall be
26 perfected by filing a written notice of appeal with the clerk
27 of the Court of Civil Appeals within 21 days after the

1 decision of the agency becomes final. The notice of appeal
2 shall be on a form prescribed by the Alabama Rules of
3 Appellate Procedure. The Court of Civil Appeals shall have no
4 discretion to refuse to hear appeals of the final decisions of
5 SHPDA timely filed under this article. Within 30 days after a
6 notice of appeal is filed, SHPDA shall transmit the
7 administrative record to the clerk, with the appealing party
8 bearing the costs associated with the preparation and
9 transmission of the record and transcript of the hearing and
10 of giving notice to the parties of the transmittal. Upon the
11 transmittal of the administrative record to the Court of Civil
12 Appeals, the appeal shall proceed in accordance with the
13 Alabama Rules of Appellate Procedure.

14 "(7) Schedule for reviews to include hearings before
15 the state agency, beginning and ending of review periods and
16 time of the review period as provided in this section.

17 "(8) Provision of the applicant to submit such
18 information that he may deem advisable in justification of the
19 application over and above the minimum information required by
20 this article and the regulations adopted hereunder.

21 "(9) Provisions for periodic reports by the health
22 provider or applicant respecting the development of the
23 proposal subject to review and for which a certificate of need
24 is issued.

25 "(10) Provisions for written findings, as
26 appropriate, which the state used as the basis for its
27 decision or any recommendation of the state agency. Such

1 findings and recommendations shall be provided to the
2 applicant and available to other interested persons upon
3 request and upon payment of a reasonable fee to cover actual
4 costs of reproduction and handling.

5 "(11) Notification upon request of providers of
6 health services and other persons subject to review of
7 findings, recommendations and decisions made under this
8 article.

9 "(12) Provision for a public hearing upon written
10 request for the reconsideration of a decision by the SHPDA and
11 for good cause by any aggrieved party, including any competing
12 applicant, or any aggrieved person who has intervened pursuant
13 to Section 41-22-14. Request for reconsideration shall be made
14 in writing not more than 15 days subsequent to the date the
15 agency (SHPDA) decision is deemed final and shall have the
16 effect of holding in abeyance the final decision and
17 suspending any certificate of need issued pursuant thereto,
18 subject to the outcome of the public hearing. The provision
19 shall state that there can be no reconsideration by the SHPDA
20 of a decision on a prior request for reconsideration; that an
21 aggrieved party shall not be required to request
22 reconsideration prior to or as a condition to requesting a
23 fair hearing; and that an aggrieved party shall not be
24 required to request reconsideration or a fair hearing prior to
25 or as a condition to seeking judicial review pursuant to
26 Section 41-22-20.

1 "(13) Provision that no decision of the SHPDA under
2 this article shall be deemed final until 15 days following the
3 date of the decision.

4 "(14) Provisions that any adverse decision of the
5 agency (SHPDA) (other than a SHPDA decision after first being
6 heard as a contested case before an administrative law judge
7 pursuant to the requirements of the Alabama Administrative
8 Procedure Act) may be appealed to an administrative law judge
9 designated by the Governor for fair hearing which appeal shall
10 be heard de novo as a contested case in accordance with
11 Sections 41-22-12 and 41-22-13. The fair hearing appeal
12 proceedings shall be conducted pursuant to the requirements of
13 the Alabama Administrative Procedure Act, Chapter 22 of Title
14 41, and regulations consistent therewith adopted under this
15 article. The fee for the administrative law judge shall be
16 based on a standard hourly rate approved by the Executive
17 Director of SHPDA and shall be apportioned, on a pro rata
18 basis, between all parties to the hearing, with each party
19 paying its pro rata amount within 30 days of receipt of an
20 itemized invoice from the administrative law judge. Unless
21 extended by agreement of all parties: a. Any public hearing
22 before an administrative law judge pursuant to this article
23 shall begin within 45 days of assignment to the administrative
24 law judge and completed within 90 days; and b. The
25 administrative law judge shall issue an order within 30 days
26 of completion of the transcript. The appeal shall be commenced
27 by a request for a fair hearing by the applicant or any

1 competing applicant, which request shall be made within 15
2 days of the date that the decision by the state agency became
3 final, or in the event of a request for reconsideration,
4 within 15 days of the date that the decision of the state
5 agency on reconsideration became final and shall have the
6 effect of holding in abeyance the decision and suspending any
7 certificate of need issued pursuant thereto subject to the
8 outcome of the fair hearing. The decision of the
9 administrative law judge in the fair hearing proceedings shall
10 be considered the final decision of the state agency (SHPDA);
11 provided, that any aggrieved party may appeal the decision to
12 the Court of Civil Appeals in accordance with the provisions
13 of subdivision (6), which shall constitute the exclusive means
14 for appeal by an aggrieved party, notwithstanding the
15 Administrative Procedure Act, Section 41-22-1, et. seq.

16 "(15) Preparation and publication, at least
17 annually, of reports by the state agency of the reviews being
18 conducted, decisions reached, certificates issued and status
19 of proposals.

20 "(16) Access by the general public to applications
21 reviewed by the SHPDA and to other written material pertinent
22 to the review.

23 "(17) Provisions for letters of intent in the case
24 of construction projects by persons proposing such projects.
25 Letters of intent shall be in such detail as the SHPDA may
26 direct by regulations. Letters of intent shall not substitute

1 for the formal application for a certificate of need as
2 provided in this article.

3 "(18) Provision that the review procedure may vary
4 according to the purpose for which a particular review is
5 being conducted and/or the nature and type of service or
6 expenditure proposed."

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.