

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 177 w/CS Hospital's Medical Staff/Open-heart Surgery  
**SPONSOR(S):** D. Davis and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 56 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)	8 Y, 0 N	Rawlins	Collins
2) Health Care	16 Y, 5 N w/CS	Rawlins	Collins
3) Health Appropriations (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

This bill creates an exemption to the CON review process for a open heart program in a new hospital provided the new hospital is being established in the location of an existing hospital with an adult open-heart surgery program. The bill requires that the existing hospital and the existing adult open-heart surgery programs are being relocated to the replacement hospital and the replacement hospital will utilize a close-staff model. A hospital is exempt from the certificate of need review for the establishment of an open-heart surgery program if the application for exemption meets specified criteria:

- The facility is a "closed-staff" facility;
- The facility maintains current licensure standards;
- The facility must maintain appropriate equipment and provide emergency services;
- The applicant is a newly-licensed hospital in a physical location previously owned and licensed to perform open-heart procedures;
- The program will perform 300 open-heart procedures each year;
- The program can perform more than 300 diagnostic cardiac catheterizations a year; and
- The facility maintains the payor mix of the community for open heart services or provides a minimum of 5% to Medicaid, charity and self pay patients.

The bill specifies that failing to meet the requirements, the facility must show cause why the exemption should not be revoked.

This bill further provides that by December 31, 2004, and annually thereafter, the agency shall submit a report to the Legislature providing information concerning the number of request for exemption received under this provision and the number of exemptions granted or denied.

As well, the bill sunsets this provision by January 1, 2008 and provides an effective date upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0177b.hc.doc  
**DATE:** March 21, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### ***Certificate of Need***

Current law specifies that a shared service or contract<sup>1</sup> and the transfer<sup>2</sup> of a CON are subject to an expedited review in the Certificate of Need process. As well, an application for the addition of open-heart surgery program must be submitted to and approved by the agency's Certificate of Need Office in accordance with the requirements contained in Chapter 408, F. S., and Rule 59C-1, Florida Administrative Code. Such approvals are subject to administrative challenge by any hospital that offers open-heart surgery in the district. All Florida districts currently include at least three and up to eight open-heart programs.

According to AHCA, it appears this bill affects the current situation between Mayo Clinic and St. Luke's Hospital in Jacksonville. Inpatient hospital services for the Mayo Clinic in Jacksonville – including adult open-heart surgery – are presently provided at St. Luke's Hospital. The Mayo Clinic has a CON approval to construct a replacement hospital at the site of its outpatient clinic, and then transfer open-heart surgery (and other services) from St. Luke's to the new hospital. It is expected that the new hospital will have a closed medical staff, meaning that all physicians on the medical staff are salaried employees of the hospital. A recommended order for the approval of the replacement hospital was issued by the Division of Administrative Hearings on February 5, 2003, supporting approval of the replacement hospital. This same order recommended approval of the St. Vincent's Hospital proposal to establish a new hospital in the St. Luke's Hospital building.

Under approved plans, the present facilities of St. Luke's Hospital will be acquired by St. Vincent's Hospital once the new facility is operational at the Mayo Clinic site. St. Vincent's will also continue to operate at its present location, which is the site of the St. Vincent's open-heart surgery program. There is no current intention to relocate that particular service to the site acquired from St. Luke's. Such a proposal would require certificate-of-need approval, but the application date could occur no sooner than the first batching cycle after St. Vincent's Hospital completes its acquisition of St. Luke's Hospital. Jacksonville (Duval County) is located in CON District 4 along with six other northeast Florida counties. There are currently seven operational and one approved open-heart surgery programs in the District.

These facilities have the option to apply for a shared services CON, which may be applied for under section 408.032(2)(b), F.S., but the application could not be processed until St. Vincent's was the owner and license holder of the facilities at that location. Under the current law, that cannot happen until the new Mayo Clinic Hospital is built and licensed. According to AHCA, it is also probable that, if such an application was submitted and approved, there would be an administrative challenge to that approval.

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<sup>1</sup> s. 408.036(2)(b), F.S.

<sup>2</sup> s. 408.036(2)(c), F.S.

This suggests the likelihood of a period from one to three years between St. Vincent's Hospital's acquisition of St. Luke's Hospital and their ability to begin operating the new shared open-heart program. Because of these expected procedural delays, it would likely be necessary to authorize a specific exemption from CON review, or to enable the shared program to be created without CON review, in order to allow the uninterrupted delivery of open-heart surgery services at St. Luke's Hospital. However, there are 7 operational open heart programs in this district.

This bill creates an exemption to the CON review process for a open heart program in a new hospital provided the new hospital is being established in the location of an existing hospital with an adult open-heart surgery program. The bill requires that the existing hospital and the existing adult open-heart surgery programs are being relocated to the replacement hospital and the replacement hospital will utilize a close-staff model. A hospital is exempt from the certificate of need review for the establishment of an open-heart surgery program if the application for exemption meets specified criteria:

- The facility is a "closed-staff" facility;
- The facility maintains current licensure standards;
- The facility must maintain appropriate equipment and provide emergency services;
- The applicant is a newly-licensed hospital in a physical location previously owned and licensed to perform open-heart procedures;
- The program will perform 300 open-heart procedures each year;
- The program can perform more than 300 diagnostic cardiac catheterizations a year; and
- The facility maintains the payor mix of the community for open heart services or provides a minimum of 5% to Medicaid, charity and self pay patients.

Failing to meet the requirements, the facility must show cause why the exemption should not be revoked.

This bill further provides, that by December 31, 2004, and annually thereafter, the agency shall submit a report to the Legislature providing information concerning the number of request for exemption received under the provisions of law and the number of exemptions granted or denied.

As well, the bill sunsets this provision by January 1, 2008 and provides of an effective date upon becoming law.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 408.036 (3),F.S., specifying that that a hospital may be exempt from the certificate of need review process if : the facility is a "closed-staff" hospital; the facility maintains current Florida Administrative Code and any future licensure standards for open heart programs adopted by the agency; the facility must maintain appropriate equipment and provide emergency services; the applicant is a newly-licensed hospital in a physical location previously owned and licensed to perform open-heart procedures; the program will perform 300 open-heart procedures each year; the hospital perform more than 300 diagnostic cardiac catheterizations a year; the program maintains the payor mix of the community for open heart services or provides a minimum of 5% to Medicaid, charity and self pay patients. Specifying that failing to meet the requirements, the facility must show cause why the exemption should not be revoked; by December 31, 2004, and annually thereafter, the agency shall submit a report to the Legislature providing information concerning the number of request for exemption received under the provisions of law and the number of exemptions granted or denied; and provides a sunsets provision by January 1, 2008.

**Section 2.** Provides for an effective date upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There may be a small percentage in overall collection of CON fees for open-heart programs.

#### 2. Expenditures:

There may be a small decrease in the percentage of legal fees associated with legal challenges regarding the Agency recommended order regarding the granting or denying of a CON application.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides for additional open-heart programs in the state, providing additional patient access to such services.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 12, 2003, the Subcommittee on Health Standards adopted a strike all amendment and an amendment to the amendment and reported the bill favorably to the Committee on Health Care.

**Amendment #1** (strike-all) differs from the original bill in that it creates an exemption to the CON review process in s. 408.036(3) for open-heart surgery programs. The exemption may only be granted if the facility meets specified standards:

- The facility is a "closed-staff" facility;
- The facility maintains current licensure standards;
- The facility must maintain appropriate equipment and provide emergency services;
- The applicant is a newly-licensed hospital in a physical location previously owned and licensed to perform open-heart procedures;
- The program will perform 300 open-heart procedures each year;
- The program can perform more than 300 diagnostic cardiac catheterizations a year; and
- The facility maintains the payor mix of the community for open heart services or provides a minimum of 5% to Medicaid, charity and self pay patients.

Failing to meet the requirements, the facility must show cause why the exemption should not be revoked.

**Amendment #1a** (amendment to the amendment ) was offered by Representative Harrell, clarifying that programs applying for the exemption, must meet all current open-heart program rules as promulgated by the agency, and any future licensure requirements adopted by the agency.

On March 19, 2003, the Committee on Health Care adopted the amendments recommended by the subcommittee and reported the bill favorably with a committee substitute.