A BILL TO BE ENTITLED
AN ACT TO EXEMPT DIAGNOSTIC CENTERS FROM CERTIFICATE OF NEED REVIEW AND TO AMEND CERTIFICATE OF NEED LAWS PERTAINING TO SINGLE-SPECIALTY AMBULATORY SURGERY OPERATING ROOMS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CERTIFICATE OF NEED AND RELATED HOSPITAL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-175 is amended by adding new subdivisions to read:

"(13) That the relocation of a hospital’s operating rooms to a location separate from the campus upon which the hospital's inpatient acute care beds and emergency department are located results in a costly and unnecessary economic burden to the public.

(14) That physicians who provide single-specialty ambulatory surgery services in unlicensed settings should be afforded an opportunity to obtain a license to provide these services in order to ensure patient safety and the provision of quality care.

(15) That the demand for ambulatory surgery is increasing due to advances in technology and anesthesia, and single-specialty ambulatory surgery operating rooms are recognized as a highly effective means of expanding access while achieving cost savings regardless of the availability and potential underutilization of hospital-based operating rooms."

SECTION 2. G.S. 131E-176(7a) is repealed.

SECTION 3. G.S. 131E-176(9b) reads as rewritten:

"(9b) ‘Health service facility’ means a hospital; long-term care hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility."

SECTION 4. G.S. 131E-176(16)u. reads as rewritten:

"(16) ‘New institutional health services’ means any of the following:

u. The construction, development, establishment, increase in the number, or relocation of an operating room, including a..."
single-specialty ambulatory surgery operating room, or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located.

...”

SECTION 5. G.S. 131E-176(24c) reads as rewritten:

"(24c) Reserved for future codification."Single-specialty ambulatory surgery operating room" means a designated operating room located in a licensed ambulatory surgical facility that is used to perform same-day surgical procedures in one of the single-specialty areas identified by the American College of Surgeons. For the purpose of this subdivision, 'same-day surgical procedures' includes pain injections by orthopedists, physiatrists, and anesthesiologists."

SECTION 6. G.S. 131E-178 reads as rewritten:

"§ 131E-178. Activities requiring certificate of need.

(a) Except as otherwise provided in subsections (a1) and (a2) of this section, no person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department; provided, however, no Department.

(a1) Any person proposing to obtain a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of need to license that setting as an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms, except for a person who (i) provides gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located in a nonlicensed setting, shall be required to obtain a certificate of need to license that setting as an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms, provided that setting and (ii) meets all of the following criteria:

(1) The person's license application is postmarked for delivery to the Division of Health Service Regulation by December 31, 2006;

(2) The applicant verifies, by affidavit submitted to the Division of Health Service Regulation within 60 days of the effective date of this act, that the facility is in operation as of the effective date of this act or that the completed application for the building permit for the facility was submitted by the effective date of this act;

(3) The facility has been accredited by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities by the time the license application is postmarked for delivery to the Division of Health Service Regulation of the Department; and

(4) The license application includes a commitment and plan for serving indigent and medically underserved populations.

All other persons proposing to obtain a license to establish an ambulatory surgical facility for the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of need. The annual State Medical Facilities Plan shall not include policies or need determinations that limit the number of gastrointestinal endoscopy rooms that may be approved.

(a2) Any person proposing to obtain a license to establish single-specialty ambulatory operating rooms in an ambulatory surgery facility shall be required to obtain a certificate of
need, except for a person who (i) provides single-specialty ambulatory surgery procedures in one or more operating rooms located in a nonlicensed setting and (ii) meets all of the following criteria:

1. The person's license application is postmarked for delivery to the Division of Health Service Regulation by December 31, 2013.

2. The applicant verifies, by affidavit submitted to the Division of Health Service Regulation within 60 days of the effective date of this act, that the facility is in operation as of the effective date of this act or that the completed application for the building permit for the facility was submitted by the effective date of this act;

3. The facility has been accredited by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities by the time the license application is postmarked for delivery to the Division of Health Service Regulation of the Department; and

4. The license application includes at least all of the following:
   a. A commitment, plan, and policies and procedures for serving indigent and medically underserved populations.
   b. Projected charges for the 20 most common surgical procedures to be performed in the proposed single-specialty ambulatory surgery operating rooms.

All other persons proposing to obtain a license to establish single-specialty ambulatory operating rooms within an ambulatory surgical facility shall be required to obtain a certificate of need. The annual State Medical Facilities Plan shall not include policies or need determinations that limit the number of single-specialty ambulatory surgery operating rooms that may be approved. However, the Department shall not approve an application for a single-specialty ambulatory surgery operating room in any ambulatory surgical facility within a county in which a licensed critical access hospital, as defined in 42 CFR § 400.202, is located. The annual State Medical Facilities Plan also shall not include policies or need determinations that limit the relocation and replacement of existing operating rooms, including single-specialty ambulatory operating rooms. However, the Department shall not approve an application for the relocation of a hospital's operating rooms to a location separate from the campus upon which the hospital's inpatient acute care beds and emergency department are located if approval would result in the hospital obtaining reimbursement for surgery procedures at a rate higher than the rate paid to ambulatory surgery centers under a government-sponsored health insurance or medical assistance program.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service, the capital expenditure for the asset shall be deemed to be the fair market value of the asset or the cost of the asset, whichever is greater.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the Department. An obligation for a capital expenditure is incurred when:
(1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by a person for the construction, acquisition, lease, or financing of a capital asset;

(2) A person takes formal action to commit funds for a construction project undertaken as his own contractor; or

(3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure, including the fair market value of equipment acquired by purchase, lease, transfer, or other comparable arrangement, is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure for new institutional health services, such expenditure shall be deemed not to exceed the amount for new institutional health services regardless of the actual amount expended, provided that the following conditions are met:

(1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for inspection at the facility and sent to the Department upon its request.

(2) The facility on whose behalf the expenditure was made notifies the Department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site.

SECTION 7. G.S. 131E-182 reads as rewritten:

"(a) The Department in its rules shall establish schedules for submission and review of completed applications. The schedules shall provide that applications for similar proposals in the same service area will be reviewed together. However, the Department is prohibited from scheduling a review prior to February 1, 2013, for certificate of need applications that propose to establish a licensed single-specialty ambulatory operating room within an ambulatory surgery facility.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria. The application form for a certificate of need to establish a single-specialty ambulatory surgery operating room within an ambulatory surgery facility shall require the applicant to (i) include a written commitment, plan, and policies and procedures for serving indigent and medically underserved populations, (ii) furnish the projected charges for the 20 most common surgical procedures to be performed in the proposed operating room, and (iii) demonstrate that it is performing or reasonably expects to perform at least 800 single-specialty ambulatory procedures per licensed single-specialty ambulatory operating room per year.

(c) An application fee is imposed on an applicant for a certificate of need. An applicant must submit the fee with the application. The fee is not refundable, regardless of whether a certificate of need is issued. Fees collected under this section shall be credited to the General Fund as nontax revenue. The application fee is five thousand dollars ($5,000) plus an amount equal to three-tenths of one percent (.3%) of the amount of the capital expenditure proposed in the application that exceeds one million dollars ($1,000,000). In no event may the fee exceed fifty thousand dollars ($50,000)."
SECTION 8. G.S. 131E-184(a) is amended by adding a new subdivision to read:

"(10) To develop, acquire, or replace an institutional health service that obtained certificate of need approval prior to the effective date of this act as a diagnostic center. For the purpose of this subdivision, 'diagnostic center' means a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility that cost ten thousand dollars ($10,000) or more exceeds five hundred thousand dollars ($500,000), unless a new institutional health service other than those defined in G.S. 131E-176(16)b. is offered or developed in the building."

SECTION 9. Nothing in this act shall be construed to reflect any legislative intent as to the circumstances under which Medicare or Medicaid certification may be obtained for a provider of ambulatory surgery services.

SECTION 10. This act is effective when it becomes law. Section 7 of this act expires on the effective date of administrative rules adopted consistent with the provisions of this act regarding the number of single-specialty surgery procedures performed or projected to be performed by applicants seeking to establish a licensed single-specialty ambulatory surgery operating room.