

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1760

6 S.P. 680

In Senate, January 2, 1986

7 Approved for introduction by a majority of the Legislative Council
8 pursuant to Joint Rule 24.

9 Received by the Secretary of the Senate on January 2, 1986. Referred to
the Committee on Human Resources and 1,600 ordered printed pursuant to
Joint Rule 14.

10 JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator Brown of Washington.

11 Cosponsored by Senator Gill of Cumberland, Representative Melendy of
Rockland and Representative Boutilier of Lewiston/Auburn.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Expedite Litigation in Cases
18 Involving Judicial Review of
19 Certificate of Need Decisions of the
20 Department of Human Services.
21

22 Be it enacted by the People of the State of Maine as
23 follows:

24 22 MRSA §311, as amended by PL 1985, c. 443, §3,
25 is further amended by adding at the end 3 new para-
26 graphs to read:

27 An appeal seeking judicial review of a decision
28 by the department to issue a certificate of need or
29 to deny an application for a certificate of need
30 shall be privileged with respect to its assignment
31 for hearing over all other actions, except writs of
32 habeas corpus, actions brought by the State against
33 individuals and appeals involving alleged violations
34 of Title 1, chapter 13, subchapter I.

In any civil action or proceedings to enforce or charging a violation of this Act, the court, in its discretion, may allow the prevailing party, other than the State, a reasonable attorney's fee as part of the costs.

In civil actions involving competitive reviews of proposals to construct new nursing home beds, the court may, in its discretion, require the party seeking judicial review to give security in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any other party who is found to have been wrongfully delayed or restrained from proceeding to implement the certificate of need.

STATEMENT OF FACT

In considering proposals to construct new nursing home beds, the Department of Human Services has followed a competitive review process involving proposals from several applicants seeking to build beds in the same high-priority geographic service areas. The applicant not ultimately selected by the department has frequently sought judicial review of the department's decision. As a result, delays of 2 or 3 years are not unusual as the case is reviewed in Superior Court and appealed to the Supreme Judicial Court.

See Hale v. Petit, 438 A.2d 226 (Me. 1981) and Bradbury Memorial Nursing Home v. Tall Pines Manor Associates, 485 A.2d 634 (Me. 1984). The ensuing delay results in increased costs to the health care system and ongoing hardship to those awaiting placement in these needed beds. It also causes great uncertainty for prevailing applicants, sometimes threatening the project involved.

This bill attempts to deal with these issues in the following ways.

1. It requires courts to expedite review of these cases in the same manner as set forth in existing law governing appeal of so-called freedom of access violations, in the Maine Revised Statutes, Title 1, section 409.

2. It gives courts the discretion to award attorneys' fees to applicants who prevail in certificate of need appeals. This is modeled after the federal civil rights laws, United States Code, Title 42, Sections 1983 and 1988.

3. It gives courts the discretion to require nursing home applicants seeking judicial review to post bonds to cover the costs of delay and economic injury to the prevailing applicant. This provision is modeled after the Maine Rules of Civil Procedures, Rule 65, governing injunctions.

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