

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (New Draft of S.P. 680, L.D. 1760)  
3 (New Title)  
4 SECOND REGULAR SESSION  
5

6 ONE HUNDRED AND TWELFTH LEGISLATURE  
7

8 Legislative Document

No. 2298

9  
10 S.P. 922

In Senate, April 1, 1986

11 Reported by Senator Gauvreau of Androscoggin from the Committee on  
12 Human Resources and printed under Joint Rule 2. Original bill sponsored by  
13 Senator Brown of Washington. Cosponsored by Senator Gill of Cumberland,  
Representative Melendy of Rockland and Representative Boutilier of  
Lewiston.

JOY J. O'BRIEN, Secretary of the Senate

14  
15 STATE OF MAINE  
16

17 IN THE YEAR OF OUR LORD  
18 NINETEEN HUNDRED AND EIGHTY-SIX  
19

20 AN ACT to Discourage Frivolous Appeals  
21 in Cases Involving Judicial Review of  
22 Certificate of Need Decisions for  
23 Nursing Homes of the Department of  
24 Human Services.  
25

26 Emergency preamble. Whereas, Acts of the Legis-  
27 lature do not become effective until 90 days after  
28 adjournment unless enacted as emergencies; and

29 Whereas, the State of Maine presently is faced  
30 with a severe shortage of nursing home beds; and

31 Whereas, the State's elderly citizens and their  
32 families currently experience long waits prior to  
33 placement in nursing home facilities; and

34 Whereas, since 1979, the Department of Human Ser-  
35 vices' certificate of need program and the

1 Legislature's appropriations process serve to allo-  
2 cate new beds through a competitive application pro-  
3 cess which solicits applications from participating  
4 geographical areas; and

5 Whereas, this competitive process has resulted in  
6 subsequent litigation on the part of certain appli-  
7 cants and this litigation has resulted in significant  
8 additional costs and delays; and

9 Whereas, these certificate of need decisions may  
10 be appealed by an unsuccessful applicant causing sig-  
11 nificant additional costs and delays and it is desir-  
12 able to discourage any appeals which might be frivo-  
13 lous; and

14 Whereas, in the judgment of the Legislature,  
15 these facts create an emergency within the meaning of  
16 the Constitution of Maine and require the following  
17 legislation as immediately necessary for the preser-  
18 vation of the public peace, health and safety; now,  
19 therefore,

20 Be it enacted by the People of the State of Maine as  
21 follows:

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

25 In civil actions involving competitive reviews of  
26 proposals to construct new nursing home beds, the  
27 court shall require the party seeking judicial review  
28 to give security in such sums as the court deems  
29 proper, for the payment of such costs and damages as  
30 may be incurred or suffered by any other party who is  
31 found to have been wrongfully delayed or restrained  
32 from proceeding to implement the certificate of need,  
33 provided that for good cause shown and recited in the  
34 order, the court may waive the giving of security. A  
35 surety upon a bond or undertaking under this para-  
36 graph submits himself to the jurisdiction of the  
37 court and irrevocably appoints the clerk of the court  
38 as his agent upon whom any papers affecting his lia-  
39 bility on the bond or undertaking may be served. His  
40 liability may be enforced on motion without the ne-

1 cessity of an independent action. The motion and  
2 such notice of the motion as the court prescribes may  
3 be served on the clerk of the court who shall forth-  
4 with mail copies to the persons giving the security  
5 if their addresses are known.

6         Emergency clause. In view of the emergency cited  
7 in the preamble, this Act shall take effect when ap-  
8 proved.

9   STATEMENT OF FACT

10         This new draft deletes the provisions concerning  
11 expeditious review and the award of attorneys' fees.  
12 The provision requiring an applicant seeking review  
13 of a nursing home certificate of need award is re-  
14 tained. Language is included to make it more con-  
15 sistent with the bonding procedures for injunctions  
16 in the Maine Rules of Civil Procedure, Rule 65.

17         The new draft also adds an emergency preamble to  
18 ensure that judicial review of any current certifi-  
19 cate of need applications for nursing home beds will  
20 require a bond.

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