

# MAINE STATE LEGISLATURE

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L.D. 2053

(Filing No. H-599 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1503, L.D. 2053,  
Bill, "AN ACT to Allow Greater Departmental Input  
Under Certificate of Need Provisions."

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Amend the bill by striking out all of the title  
and inserting in its place the following:

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'AN ACT Allowing Waiver of Certificate of Need Review  
Requirements for Projects Other Than Those Related to  
Acute Patient Care When the Waiver Would Further the  
Purposes of the Maine Certificate of Need Act.'

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Further amend the bill by striking out all of  
section 2 and inserting in its place the following:

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'Sec. 2. 22 MRSA §304-E is enacted to read:

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§304-E. Waiver of certificate of need review when  
review is unnecessary and serves no public  
purpose

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1. Request for waiver. An applicant for a  
project requiring a certificate of need, other than a  
project related to acute patient care or a project  
that could affect the financial requirements of a  
hospital under chapter 107, may request a waiver of  
the review requirements under this chapter. The  
applicant shall submit, with the request, sufficient  
written documentation to demonstrate that the proposed  
project meets the conditions of this section and that  
sufficient public notice of the proposed waiver has  
been given.

1           2. Public notice. The applicant shall give  
2 public notice, on a form provided by the department,  
3 of its intention to seek a waiver of full review.  
4 This notice shall be given in the Kennebec Journal and  
5 in a daily newspaper of general circulation in the  
6 applicant's service area. The public shall be given  
7 10 days from the date of publication within which to  
8 submit to the department any comments concerning the  
9 proposed waiver of review.

10           3. Criteria for waiver. The department may waive  
11 the requirement for a full certificate of need review  
12 of a project, if the department finds that the waiver,  
13 rather than full review, would best further the  
14 purposes of the Maine Certificate of Need Act, as set  
15 forth in section 302, subsection 2. When making this  
16 determination, the department shall consider a number  
17 of factors including, but not limited to:

18           A. Whether the proposed project would incur no or  
19 minimal additional expense to the public or to the  
20 health care facility's clients;

21           B. Whether the proposed project is or will be in  
22 compliance with other state and local laws and  
23 regulations;

24           C. Whether the proposed project primarily  
25 involves the maintenance of a health care facility  
26 as is; and

27           D. Whether the health and welfare of any person  
28 the health care facility is already serving will  
29 be significantly adversely affected if a waiver is  
30 not granted.

31           4. Other action by department. If the department  
32 finds that the proposal is not clearly eligible for a  
33 waiver of the review requirements, it may elect to  
34 conduct an emergency review, a simplified review  
35 pursuant to section 308, subsection 1, or a full  
36 review.

37           5. Notification of decision. The department  
38 shall notify the applicant of its decision in writing

COMMITTEE AMENDMENT "A" to H.P. 1503, L.D. 2053

1 as soon as it determines whether to grant or deny the  
2 request for a waiver or decides to conduct a different  
3 review in accordance with subsection 4. The notice  
4 shall include a brief summary of the reasons for the  
5 department's decision.

6 6. Report to Legislature. The department shall  
7 submit an annual report to the joint standing  
8 committee of the Legislature having jurisdiction over  
9 human resources on the implementation and operation of  
10 this section no later than February 15th of each year.'

11 STATEMENT OF FACT

12 This amendment rewrites and clarifies the waiver  
13 of certificate of need provisions of the original  
14 bill, including the addition of a limitation on this  
15 type of waiver to projects, other than projects  
16 related to acute patient care or projects that could  
17 affect the financial requirements of a hospital under  
18 the Maine Revised Statutes, Title 22, chapter 107. In  
19 addition, it lists several factors which the  
20 department may consider when evaluating whether a  
21 waiver is appropriate. The type of projects which are  
22 likely to be considered for a waiver include:  
23 Decreases in a nursing home's licensed or certified  
24 bed capacity; termination of a health service,  
25 including a facility which goes out of business;  
26 replacement of equipment which does not involve an  
27 upgrading of services or technological capabilities;  
28 construction or renovation of projects at existing  
29 facilities when the applicant does not seek  
30 reimbursement for related expenses; transfers of  
31 ownership in certain instances, for example, when  
32 there is a clear need to maintain the existing  
33 complement of beds, when the purchaser is clearly fit,  
34 willing and able to implement the project, and when no  
35 additional noncapital operating costs will accrue to  
36 the health care system.

37 This amendment also requires an annual report to  
38 the Legislature on the operation and implementation of  
39 this law.