



General Assembly

January Session, 2003

**Raised Bill No. 6452**

LCO No. 3260

Referred to Committee on Public Health

Introduced by:  
(PH)

**AN ACT CONCERNING CERTIFICATES OF NEED AND REPEALING  
HOSPITALS' ABILITY TO ACQUIRE CONTIGUOUS LAND AND  
BUILDINGS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) to (c), inclusive, of section 19a-638 of the  
2 general statutes are repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2003*):

4 (a) Except as provided in sections 19a-639a to 19a-639c, inclusive:

5 (1) Each health care facility or institution, that intends to (A) transfer  
6 all or part of its ownership or control, (B) change the governing powers  
7 of the board of a parent company or an affiliate, whatever its  
8 designation, or (C) change or transfer the powers or control of a  
9 governing or controlling body of an affiliate, shall submit to the office,  
10 prior to the proposed date of such transfer or change, a request for  
11 permission to undertake such transfer or change.

12 (2) Each health care facility or institution or state health care facility  
13 or institution, including any inpatient rehabilitation facility, which  
14 intends to introduce any additional function or service into its

15 program of health care shall submit to the office, prior to the proposed  
16 date of the institution of such function or service, a request for  
17 permission to undertake such function or service.

18 (3) Each health care facility or institution or state health care facility  
19 or institution which intends to terminate a health service offered by  
20 such facility or institution or [decrease] reduce substantially its [total]  
21 licensed bed capacity, shall submit to the office, prior to the proposed  
22 date of such termination or decrease, a request to undertake such  
23 termination or decrease.

24 (4) Each applicant, prior to submitting a certificate of need  
25 application under this section, section 19a-639 or under both sections,  
26 shall submit a request, in writing, for application forms and  
27 instructions to the office. The request shall be known as a letter of  
28 intent. A letter of intent shall include: (A) The name of the applicant or  
29 applicants; (B) a statement indicating whether the application is for a  
30 new, replacement or additional facility, service or function, the  
31 expansion or relocation of an existing facility, service or function, a  
32 change in ownership or control, a termination of a service or a  
33 reduction in licensed bed capacity and the bed type, any new or  
34 additional beds and their type, a capital expenditure over one million  
35 dollars, the acquisition of major medical equipment, imaging  
36 equipment or a linear accelerator costing over four hundred thousand  
37 dollars, or any combination thereof; (C) the estimated capital cost,  
38 value or expenditure; (D) the town where the project is or will be  
39 located; and (E) a brief description of the proposed project. The office  
40 shall provide public notice of any complete letter of intent submitted  
41 under this section, section 19a-639, as amended by this act, or both, by  
42 publication in a newspaper having a substantial circulation in the area  
43 served or to be served by the applicant. Such notice shall be submitted  
44 for publication not later than fifteen business days after a  
45 determination that a letter of intent is complete. No certificate of need  
46 application will be considered submitted to the office unless a current  
47 letter of intent, specific to the proposal and in compliance with this

48 subsection, has been on file with the office at least sixty days. A current  
49 letter of intent is a letter of intent which has been on file at the office up  
50 to and including one hundred twenty days, except that an applicant  
51 may request a one-time extension of a letter of intent of up to an  
52 additional thirty days for a maximum total of up to one hundred fifty  
53 days if, prior to the expiration of the current letter of intent, the office  
54 receives a written request to so extend the letter of intent's current  
55 status. The extension request shall fully explain why an extension is  
56 requested. The office shall accept or reject the extension request within  
57 five business days and shall so notify the applicant.

58 (b) The office shall make such review of a request made pursuant to  
59 subdivision (1), (2) or (3) of subsection (a) of this section as it deems  
60 necessary. In the case of a proposed transfer of ownership or control,  
61 the review shall include, but not be limited to, the financial  
62 responsibility and business interests of the transferee and the ability of  
63 the institution to continue to provide needed services or, in the case of  
64 the introduction of a new or additional function or service expansion  
65 or the termination of a service or function, ascertaining the availability  
66 of such service or function at other inpatient rehabilitation facilities,  
67 health care facilities or institutions or state health care facilities or  
68 institutions or other providers within the area to be served, the need  
69 for such service or function within such area and any other factors  
70 which the office deems relevant to a determination of whether the  
71 facility or institution is justified in introducing or terminating such  
72 functions or services into or from its program. The office shall grant,  
73 modify or deny such request [within] no later than ninety days [of the]  
74 after the date of receipt of a complete application, except as provided  
75 for in this section. Upon the request of the applicant, the review period  
76 may be extended for an additional fifteen days if the office has  
77 requested additional information subsequent to the commencement of  
78 the review period. The commissioner may extend the review period  
79 for a maximum of thirty days if the applicant has not filed in a timely  
80 manner information deemed necessary by the office. Failure of the  
81 office to act on such request within such review period shall be

82 deemed approval thereof. The ninety-day review period, pursuant to  
83 this subsection, for an application filed by a hospital, as defined in  
84 section 19a-490, and licensed as a short-term acute-care general  
85 hospital or children's hospital by the Department of Public Health or  
86 an affiliate of such a hospital or any combination thereof, shall not  
87 apply if, in the certificate of need application or request, the hospital or  
88 applicant projects either (1) that, for the first three years of operation  
89 taken together, the total impact of the proposal on the operating  
90 budget of the hospital or an affiliate of such a hospital or any  
91 combination thereof will exceed one per cent of the actual operating  
92 expenses of the hospital for the most recently completed fiscal year as  
93 filed with or determined by the office, or (2) that the total capital  
94 expenditure for the project will exceed fifteen million dollars. If the  
95 office determines that an application is not subject to the ninety-day  
96 review period pursuant to this subsection, it shall remain so excluded  
97 for the entire review period of that application, even if the application  
98 or circumstances change and the application no longer meets the stated  
99 terms of the exclusion. Upon a showing by such facility or institution  
100 that the need for such function, service or termination or change of  
101 ownership or control is of an emergency nature, in that the function,  
102 service or termination or change of ownership or control is necessary  
103 to comply with requirements of any federal, state or local health, fire,  
104 building or life safety code, the commissioner may waive the letter of  
105 intent requirement, provided such request shall be submitted at least  
106 ten business days before the proposed date of institution of the  
107 function, service or termination or change of ownership or control.

108 (c) (1) The office may hold a public hearing with respect to any  
109 complete certificate of need application submitted under this section.  
110 At least two weeks' notice of such public hearing shall be given to the  
111 applicant in writing and to the public by publication in a newspaper  
112 having a substantial circulation in the area served by the facility,  
113 institution or provider. At the discretion of the office, such hearing  
114 may be held in Hartford or in the area so served or to be served. In  
115 conducting its activities under this section, section 19a-639, as

116 amended by this act, or under both sections, the office may hold  
117 hearings on applications of a similar nature at the same time.

118 (2) The office may hold a public hearing after consideration of  
119 criteria that include, but need not be limited to, whether the proposal  
120 involves: (A) The provision of a new or additional health care function  
121 or service through the use of technology that is new or being  
122 introduced into the state; (B) the provision of a new or additional  
123 health care function or service that is not provided in either a region  
124 designated by the applicant or in the applicant's existing primary  
125 service area as defined by the office; or (C) the termination of an  
126 existing health care function or service, the reduction of licensed beds  
127 or the closing of a health care facility.

128 (3) The office shall hold a public hearing with respect to any  
129 complete certificate of need application submitted to the office under  
130 this section if three individuals or an individual representing an entity  
131 with five or more people submit a request in writing that a public  
132 hearing be held on the proposal after the office has published notice of  
133 a complete letter of intent.

134 Sec. 2. Subsection (b) of section 19a-639 of the general statutes is  
135 repealed and the following is substituted in lieu thereof (*Effective*  
136 *October 1, 2003*):

137 [(b) The office shall hold a public hearing with respect to any  
138 complete certificate of need request under this section, at least two  
139 weeks' notice of which shall be given to the facility, institution or  
140 provider by certified mail and to the public by publication in a  
141 newspaper having a substantial circulation in the area served by the  
142 facility, institution or provider.]

143 (b) (1) The commissioner shall notify the Commissioner of Social  
144 Services of any [application] certificate of need request that may  
145 impact on expenditures under the state medical assistance program.  
146 [Such hearing shall be held at the discretion of the office in Hartford or

147 in the area so served or to be served.] The office shall consider such  
148 request in relation to the community or regional need for such capital  
149 program or purchase of land, the possible effect on the operating costs  
150 of the health care facility or institution and such other relevant factors  
151 as the office deems necessary. In approving or modifying such request,  
152 the commissioner may not prescribe any condition, such as but not  
153 limited to, any condition or limitation on the indebtedness of the  
154 facility or institution in connection with a bond issue, the principal  
155 amount of any bond issue or any other details or particulars related to  
156 the financing of such capital expenditure, not directly related to the  
157 scope of such capital program and within control of the facility or  
158 institution.

159 (2) An applicant, prior to submitting a certificate of need  
160 application, shall submit a request, in writing, for application forms  
161 and instructions to the office. The request shall be known as a letter of  
162 intent. A letter of intent shall conform to the letter of intent  
163 requirements of subdivision (4) of subsection (a) of section 19a-638, as  
164 amended by this act. No certificate of need application will be  
165 considered submitted to the office unless a current letter of intent,  
166 specific to the proposal and in compliance with this subsection, is on  
167 file with the office at least sixty days. A current letter of intent is a  
168 letter of intent which has been on file at the office no more than one  
169 hundred twenty days, except that an applicant may request a one-time  
170 extension of a letter of intent of up to an additional thirty days for a  
171 maximum total of up to one hundred fifty days if, prior to the  
172 expiration of the current letter of intent, the office receives a written  
173 request to so extend the letter of intent's current status. The extension  
174 request shall fully explain why an extension is requested. The office  
175 shall accept or reject the extension request within five business days  
176 and shall so notify the applicant. Upon a showing by such facility or  
177 institution that the need for such capital program is of an emergency  
178 nature, in that the capital expenditure is necessary to comply with any  
179 federal, state or local health, fire, building or life safety code, the  
180 commissioner may waive the letter of intent requirement, [and that a

181 public hearing be held,] provided such request shall be submitted at  
182 least ten business days before the proposed initiation date of the  
183 project. The commissioner shall grant, modify or deny such request  
184 within ninety days or within ten business days, as the case may be, of  
185 receipt thereof, except as provided for in this section. Upon the request  
186 of the applicant, the review period may be extended for an additional  
187 fifteen days if the office has requested additional information  
188 subsequent to the commencement of the review period. The  
189 commissioner may extend the review period for a maximum of thirty  
190 days if the applicant has not filed, in a timely manner, information  
191 deemed necessary by the office. Failure of the office to act thereon  
192 within such review period shall be deemed approval of such request.  
193 The ninety-day review period, pursuant to this section, for an  
194 application filed by a hospital, as defined in section 19a-490, and  
195 licensed as a short-term acute-care general hospital or a children's  
196 hospital by the Department of Public Health or an affiliate of such a  
197 hospital or any combination thereof, shall not apply if, in the certificate  
198 of need application or request, the hospital or applicant projects either  
199 (1) that, for the first three years of operation taken together, the total  
200 impact of the proposal on the operating budget of the hospital or an  
201 affiliate or any combination thereof will exceed one per cent of the  
202 actual operating expenses of the hospital for the most recently  
203 completed fiscal year as filed with the office, or (2) that the total capital  
204 expenditure for the project will exceed fifteen million dollars. If the  
205 office determines that an application is not subject to the ninety-day  
206 review period pursuant to this subsection, it shall remain so excluded  
207 for the entire period of that application, even if the application or  
208 circumstances change and the application no longer meets the stated  
209 terms of the exclusion. The office shall adopt regulations to establish  
210 an expedited hearing process to be used to review requests by any  
211 facility or institution for approval of a capital expenditure to establish  
212 an energy conservation program or to comply with requirements of  
213 any federal, state or local health, fire, building or life safety code or  
214 final court order. The office shall adopt regulations in accordance with

215 the provisions of chapter 54 to provide for the waiver of a hearing, for  
216 any part of a request by a facility or institution for a capital  
217 expenditure, provided such facility or institution and the office agree  
218 upon such waiver.

219 (3) The office shall comply with the public notice provisions of  
220 subdivision (4) of subsection (a) of section 19a-638, as amended by this  
221 act, and may hold a public hearing with respect to any complete  
222 certificate of need application filed under this section. At least two  
223 weeks notice of such public hearing shall be given to the applicant in  
224 writing, and to the public by publication in a newspaper having a  
225 substantial circulation in the area served by the applicant. At the  
226 discretion of the office, such hearing shall be held in Hartford or in the  
227 area so served or to be served. The office may hold a public hearing  
228 after considering criteria that may include, but need not be limited to,  
229 the following: (A) The proposal has associated total capital  
230 expenditures or total capital costs that exceed twenty million dollars  
231 for land, building or nonclinical equipment acquisition, new building  
232 construction or building renovation; or (B) the proposal has associated  
233 total capital expenditures per unit or total capital costs per unit that  
234 exceed one million dollars for major medical equipment, imaging  
235 equipment or a linear accelerator, utilizing technology that is new or  
236 being introduced into the state.

237 (4) The office shall hold a public hearing with respect to any  
238 complete certificate of need application filed with the office under this  
239 section if three individuals or an individual representing an entity  
240 comprised of five or more people submit a request in writing that a  
241 public hearing be held on the proposal after the office has published  
242 notice of a complete letter of intent.

243 Sec. 3. Subsection (a) of section 19a-643 of the general statutes is  
244 repealed and the following is substituted in lieu thereof (*Effective*  
245 *October 1, 2003*):

246 (a) The office shall adopt regulations, in accordance with the

247 provisions of chapter 54, to carry out the provisions of sections 19a-630  
248 to 19a-640, inclusive, and sections 19a-644 [, 19a-645] and 19a-648,  
249 concerning the submission of data by health care facilities and  
250 institutions, including data on dealings between health care facilities  
251 and institutions and their affiliates, and, with regard to requests or  
252 proposals pursuant to sections 19a-638 and 19a-639, by state health  
253 care facilities and institutions, the ongoing inspections by the office of  
254 operating budgets of health care facilities and institutions after their  
255 approval, standard reporting forms and standard accounting  
256 procedures to be utilized by health care facilities and institutions and  
257 the transferability of line items in the approved operating budgets of  
258 the health care facilities and institutions, except that any health care  
259 facility or institution may transfer any amounts among items in its  
260 operating budget, provided such facility or institution is not exceeding  
261 and will not exceed its overall operating budget. All such transfers  
262 shall be reported to the office within thirty days of the transfer or  
263 transfers.

264 Sec. 4. Section 48-21 of the general statutes is repealed and the  
265 following is substituted in lieu thereof (*Effective October 1, 2003*):

266 In any proceeding brought under the provisions of subsection (b) or  
267 (e) of section 13a-73 or section 13a-74, 13a-76, 13a-77 [,] or 13a-78 or  
268 [section 19a-645 or] subsection (a), (b) or (c) of section 32-658 or  
269 sections 32-659 to 32-663, inclusive, notice shall be given to all persons  
270 appearing of record as holders of any mortgage, lien or other  
271 encumbrance on any real estate or interest therein which is to be taken  
272 by right of eminent domain or by condemnation proceedings, in the  
273 same manner as notice is required to be given to the owner of such  
274 property; and the amount due any such mortgagee, lienor or other  
275 encumbrancer, not exceeding the amount to be paid for such property,  
276 shall be paid to him according to priority of claims, before any sum is  
277 paid to any owner of such property. In case of dispute as to the  
278 amount due any such mortgagee, lienor or other encumbrancer, the  
279 money may be deposited with the clerk of the superior court for the

280 judicial district in which such property is situated, and anyone  
281 claiming an interest in the same may bring suit therefor, making all  
282 others claiming interest in the fund defendants, and the court may  
283 determine the rights in the fund of all parties to such suit, and may tax  
284 costs according to the rules of equity.

285 Sec. 5. (*Effective October 1, 2003*) Section 19a-645 of the general  
286 statutes is repealed.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>

**Statement of Purpose:**

To allow more opportunity for public comment about certificates of need by publishing public notice of applications for certificates of need and by requiring public hearings on such applications under certain circumstances, and to repeal section 19a-645, which will eliminate the ability of a nonprofit hospital to petition the courts to acquire contiguous land and buildings through eminent domain.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*