



# Senate

General Assembly

**File No. 449**

January Session, 2005

Senate Bill No. 1143

*Senate, April 20, 2005*

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING CERTIFICATE OF NEED APPLICANTS AND PUBLIC HEARING REQUESTS.**

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

1 Section 1. Section 19a-630a of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2005*):

3 As used in sections 19a-638 to [19a-639a] 19-639c, inclusive, as  
4 amended by this act, "affiliate" means [any health-care-related person  
5 who directly or indirectly through one or more intermediaries, controls  
6 or is controlled by or is under common control with, another health-  
7 care-related person] a person, entity or organization controlling,  
8 controlled by or under common control with another person, entity or  
9 organization. In addition to other means of being controlled, a person  
10 is deemed controlled by another person if the other person, or one of  
11 that other person's affiliates, officers or management employees, acting  
12 in such capacity, acts as a general partner of a general or limited  
13 partnership or manager of a limited liability company. [in question.

14 For purposes of this section, "health-care-related person" means an  
15 entity that is licensed by a state agency to provide direct patient care  
16 services for the prevention, diagnosis or treatment of human health  
17 conditions.]

18 Sec. 2. Subsection (c) of section 19a-638 of the general statutes is  
19 repealed and the following is substituted in lieu thereof (*Effective*  
20 *October 1, 2005*):

21 (c) (1) The office may hold a public hearing with respect to any  
22 complete certificate of need application submitted under this section.  
23 At least two weeks' notice of such public hearing shall be given to the  
24 applicant, in writing, and to the public by publication in a newspaper  
25 having a substantial circulation in the area served by the facility,  
26 institution or provider. At the discretion of the office, such hearing  
27 may be held in Hartford or in the area so served or to be served. In  
28 conducting its activities under this section, section 19a-639, or under  
29 both sections, the office may hold hearings on applications of a similar  
30 nature at the same time.

31 (2) The office may hold a public hearing after consideration of  
32 criteria that include, but need not be limited to, whether the proposal  
33 involves: (A) The provision of a new or additional health care function  
34 or service through the use of technology that is new or being  
35 introduced into the state; (B) the provision of a new or additional  
36 health care function or service that is not provided in either a region  
37 designated by the applicant or in the applicant's existing primary  
38 service area as defined by the office; or (C) the termination of an  
39 existing health care function or service, the reduction of total beds or  
40 the closing of a health care facility.

41 (3) The office shall hold a public hearing with respect to any  
42 complete certificate of need application submitted to the office under  
43 this section if (A) three individuals or an individual representing an  
44 entity with five or more people submit a request, in writing, that a  
45 public hearing be held on the proposal after the office has published  
46 notice of a complete letter of intent, and (B) such request is received by

47 the office not later than twenty-one calendar days after the office  
48 deems the certificate of need application complete.

49 Sec. 3. Subsection (b) of section 19a-639 of the general statutes is  
50 repealed and the following is substituted in lieu thereof (*Effective*  
51 *October 1, 2005*):

52 (b) (1) The commissioner shall notify the Commissioner of Social  
53 Services of any certificate of need request that may impact on  
54 expenditures under the state medical assistance program. The office  
55 shall consider such request in relation to the community or regional  
56 need for such capital program or purchase of land, the possible effect  
57 on the operating costs of the health care facility or institution and such  
58 other relevant factors as the office deems necessary. In approving or  
59 modifying such request, the commissioner may not prescribe any  
60 condition, such as but not limited to, any condition or limitation on the  
61 indebtedness of the facility or institution in connection with a bond  
62 issue, the principal amount of any bond issue or any other details or  
63 particulars related to the financing of such capital expenditure, not  
64 directly related to the scope of such capital program and within control  
65 of the facility or institution.

66 (2) An applicant, prior to submitting a certificate of need  
67 application, shall submit a request, in writing, for application forms  
68 and instructions to the office. The request shall be known as a letter of  
69 intent. A letter of intent shall conform to the letter of intent  
70 requirements of subdivision (4) of subsection (a) of section 19a-638. No  
71 certificate of need application will be considered submitted to the  
72 office unless a current letter of intent, specific to the proposal and in  
73 compliance with this subsection, is on file with the office for at least  
74 sixty days. A current letter of intent is a letter of intent [which] that has  
75 been on file at the office no more than one hundred twenty days,  
76 except that an applicant may request a one-time extension of a letter of  
77 intent of up to an additional thirty days for a maximum total of up to  
78 one hundred fifty days if, prior to the expiration of the current letter of  
79 intent, the office receives a written request to so extend the letter of

80 intent's current status. The extension request shall fully explain why an  
81 extension is requested. The office shall accept or reject the extension  
82 request [within] not later than five business days from the date the  
83 office receives the extension request and shall so notify the applicant.  
84 Upon a showing by such facility or institution that the need for such  
85 capital program is of an emergency nature, in that the capital  
86 expenditure is necessary to comply with any federal, state or local  
87 health, fire, building or life safety code, the commissioner may waive  
88 the letter of intent requirement, provided such request shall be  
89 submitted at least ten business days before the proposed initiation date  
90 of the project. The commissioner shall grant, modify or deny such  
91 request [within] not later than ninety days or [within] not later than  
92 ten business days, as the case may be, of receipt [thereof] of such  
93 request, except as provided for in this section. Upon the request of the  
94 applicant, the review period may be extended for an additional fifteen  
95 days if the office has requested additional information subsequent to  
96 the commencement of the review period. The commissioner may  
97 extend the review period for a maximum of thirty days if the applicant  
98 has not filed, in a timely manner, information deemed necessary by the  
99 office. Failure of the office to act [thereon] upon such request within  
100 such review period shall be deemed approval of such request. The  
101 ninety-day review period, pursuant to this section, for an application  
102 filed by a hospital, as defined in section 19a-490, and licensed as a  
103 short-term [acute-care] acute care general hospital or a children's  
104 hospital by the Department of Public Health or an affiliate of such a  
105 hospital or any combination thereof, shall not apply if, in the certificate  
106 of need application or request, the hospital or applicant projects either  
107 (A) that, for the first three years of operation taken together, the total  
108 impact of the proposal on the operating budget of the hospital or an  
109 affiliate or any combination thereof will exceed one per cent of the  
110 actual operating expenses of the hospital for the most recently  
111 completed fiscal year as filed with the office, or (B) that the total capital  
112 expenditure for the project will exceed fifteen million dollars. If the  
113 office determines that an application is not subject to the ninety-day  
114 review period pursuant to this subsection, it shall remain so excluded

115 for the entire period of that application, even if the application or  
116 circumstances change and the application no longer meets the stated  
117 terms of the exclusion. The office shall adopt regulations, in  
118 accordance with chapter 54, to establish an expedited hearing process  
119 to be used to review requests by any facility or institution for approval  
120 of a capital expenditure to establish an energy conservation program  
121 or to comply with requirements of any federal, state or local health,  
122 fire, building or life safety code or final court order. The office shall  
123 adopt regulations in accordance with the provisions of chapter 54 to  
124 provide for the waiver of a hearing, for any part of a request by a  
125 facility or institution for a capital expenditure, provided such facility  
126 or institution and the office agree upon such waiver.

127 (3) The office shall comply with the public notice provisions of  
128 subdivision (4) of subsection (a) of section 19a-638, and shall hold a  
129 public hearing with respect to any complete certificate of need  
130 application filed under this section, if: (A) The proposal has associated  
131 total capital expenditures or total capital costs that exceed twenty  
132 million dollars for land, building or nonclinical equipment acquisition,  
133 new building construction or building renovation; [or] (B) the proposal  
134 has associated total capital expenditures per unit or total capital costs  
135 per unit that exceed one million dollars for major medical equipment,  
136 imaging equipment or a linear accelerator, utilizing technology that is  
137 new or being introduced into the state; or (C) three individuals or an  
138 individual representing an entity comprised of five or more people  
139 submit a request, in writing, that a public hearing be held on the  
140 proposal and such request is received by the office not later than  
141 twenty-one calendar days after the office deems the certificate of need  
142 application complete. At least two weeks' notice of such public hearing  
143 shall be given to the applicant, in writing, and to the public by  
144 publication in a newspaper having a substantial circulation in the area  
145 served by the applicant. At the discretion of the office, such hearing  
146 shall be held in Hartford or in the area so served or to be served.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2005</i>	19a-630a
Sec. 2	<i>October 1, 2005</i>	19a-638(c)
Sec. 3	<i>October 1, 2005</i>	19a-639(b)

**PH**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 06 \$</b>	<b>FY 07 \$</b>
Health Care Access, Off.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill broadens the definition of affiliate for purposes of certificate of need (CON) review by the Office of Health Care Access. An estimated additional five CON reviews will be handled annually. It is expected that the Office will be able to accommodate this increased workload within its anticipated budgetary resources.

A corresponding revenue gain to the state would ensue, as CON filing fees would be collected from any additional applicants. A filing fee of \$400 is collected when CON requests involve capital expenditures for major medical equipment, imaging equipment or a linear accelerator costing more than \$400,000 but less than or equal to \$1 million. A filing fee of \$1,000 plus .05 percent of the total project cost is paid when an applicant seeks to make a capital expenditure in excess of \$1 million.

A workload reduction may result to the extent that imposing a twenty-one day limit upon requests for public hearings concerning completed CON applications reduces the number of such hearings held by the Office. However, requests for hearings are infrequently submitted after a CON application is completed. Therefore, the anticipated impact upon the agency’s workload is not anticipated to be appreciable.

Other changes in the bill are technical in nature and result in no fiscal impact.

**OLR Bill Analysis**

SB 1143

**AN ACT CONCERNING CERTIFICATE OF NEED APPLICANTS  
AND PUBLIC HEARING REQUESTS****SUMMARY:**

This bill makes two changes to the certificate of need (CON) program administered by the Office of Health Care Access (OHCA). It (1) redefines "affiliate" for purposes of CON review and (2) establishes a time period by which a person seeking a public hearing on a CON application must make a request to OHCA.

CON is a regulatory process for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed.

EFFECTIVE DATE: October 1, 2005

**AFFILIATE DEFINITION**

The bill redefines "affiliate" more broadly to include not just licensed providers of direct patient care services but also any unlicensed corporate holding company, affiliate, or subsidiary of that provider. Specifically, it defines affiliate as a person, entity, or organization controlling, controlled by, or under common control with another person, entity or organization. By law, a CON is required whenever a health care facility or institution intends to (1) transfer all or part of its ownership or control, (2) change the governing powers of the board of a parent company or an affiliate, or (3) change or transfer the powers or control of a governing body or controlling body of an affiliate. A person is considered controlled by another if the other person or one of that person's affiliates, officers, agents, or management employees acts as a general partner of a general or limited partnership or manager of a limited liability company.

Existing law defines affiliate as any health-care related person who directly or indirectly through at least one intermediary controls, or is controlled by, or is under common control with another health-care-related person. The definition of health-care-related person, eliminated under the bill, is an entity licensed by the state to provide direct patient care services.

## **PUBLIC HEARINGS**

By law, OHCA must hold a public hearing on a completed CON application if (1) the proposal has associated total capital expenditures or total capital costs exceeding \$20 million for land, building, or non-clinical equipment acquisition, new building construction, or building renovation or (2) the proposal has associated total per-unit capital expenditures or capital costs exceeding \$1 million for major medical equipment, imaging equipment, or linear accelerators that use new technology or technology being introduced to the state.

Also under the law, OHCA may hold a public hearing on a CON application involving (1) use of technology that is new or being introduced to the state; (2) new or additional health care functions or services being introduced; or (3) termination of any existing health care function or service, reduction of total beds, or closing of a health care facility. But OHCA must hold a public hearing in these situations if three people, or one person representing an entity of five or more people, request it in writing.

This bill requires that in the case of a person requesting a hearing, OHCA must receive their request within 21 calendar days from the date OHCA deems the CON application complete.

## **COMMITTEE ACTION**

Public Health Committee

Joint Favorable Report

Yea 24      Nay 0