



**House  
Legislative  
Analysis  
Section**

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**CON STANDARDS: EXEMPT FROM APA**

Senate Bill 948 as passed the Senate  
First Analysis (9-20-88)

RECEIVED

Sponsor: Sen. John J. H. Schwarz  
Senate Committee: Health Policy  
House Committee: Public Health

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**THE APPARENT PROBLEM:**

The legislature is currently contemplating proposed changes to the state's certificate of need system that are the result of over two years of work by representatives of interested parties, including state health planners, hospitals, nursing homes, doctors, businesses, and labor unions. The CON system requires health care providers such as hospitals to obtain the approval of state regulators before making large expenditures for new facilities, equipment, and services. One of the bills in the CON reform package, House Bill 5145, proposes, among other things, the creation of a Certificate of Need Standards Commission, whose main responsibility would be to put in place through a special procedure standards for determining which clinical services and medical equipment would require certificates and standards for use in evaluating CON applications. A basic aim of this approach to issuing standards is to create an expeditious procedure that will allow the CON system to adapt more quickly to changing circumstances; for example, to the introduction of new technology. Before any standards could be adopted, the commission would have to hold a public hearing on them and submit them to the governor and to the legislative committees with jurisdiction over public health matters. The governor or legislature would have about 30 days to disapprove of a commission proposal. No proposal that had been disapproved could take effect. Some people involved in formulating the CON legislation believe that the standards established through this special procedure should be specifically exempted from the Administrative Procedures Act to guard against legal challenges.

**THE CONTENT OF THE BILL:**

The bill would amend the Administrative Procedures Act to exempt certain certificate of need (CON) standards and requirements, as specified in the bill, from the act's definition of "rule." The Legislative Service Bureau would have to publish the standards once finally approved in the Michigan Register, but could publish brief synopses if publication of the standards in their entirety would be "unreasonably expensive or lengthy."

Under the bill, all of the following, after receiving final approval from the Certificate of Need Standards Commission, as currently proposed in House Bill 5145, would not be considered a rule:

- The designation, deletion, or revision of covered medical equipment and covered clinical services.
- Certificate of need review standards.
- Data reporting requirements and criteria for determining health facility viability.
- Standards used by the Department of Public Health in designating a regional certificate of need review agency.
- The modification of the 100 licensed-bed-limitation for short-term nursing care programs proposed in House Bill 4525 (Public Act 308 of 1988).

The bill is tie-barred to the other bills in the CON and health planning package: House Bills 4525 and 5575, which have been enacted, and Senate Bill 64 and House Bill 5145, which are still before the legislature.

MCL 24.207 et al.

**FISCAL IMPLICATIONS:**

The Senate Fiscal Agency says the bill would have no fiscal impact on state and local government. (9-1-88)

**ARGUMENTS:**

**For:**

One of the bills in the package that would reform the state's certificate of need system, House Bill 5145, proposes the creation of a new commission to put in place standards that would, among other things, be used to evaluate CON applications from health care institutions. These standards would be adopted by means of a special procedure that should be faster and more flexible than the rule-promulgating procedure commonly used by state agencies. The special procedure, it should be noted, would only allow the CON standards to take effect with the consent of the legislature. The Legislative Service Bureau has said that the Administrative Procedures Act, which governs how rules of state agencies are adopted, should be amended to specifically exempt the CON standards so as to avoid legal challenges to the standards. Senate Bill 948 proposes that exemption. Various other kinds of rules, orders, opinions, directives, and guidelines are exempt from the APA; for example, certain fish and game rules, rules relating to the use of streets and highways, and rules directed at inmates of correctional facilities.

**POSITIONS:**

The Economic Alliance For Michigan supports the concept of the bill, recognizing that it may require amendments depending on the outcome of conference committee action on tie-barred bills. (9-19-88)

The Michigan Hospital Association supports the bill. (9-20-88)

S.B. 948 (9-20-88)