

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 862

S.P. 292

In Senate, March 15, 1993

An Act to Clarify Mandatory Waiver Authority Concerning Construction Requirements.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator FOSTER of Hancock. (BY REQUEST).

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

2
4 **Sec. 1. 5 MRSA §4593, sub-§1**, as amended by PL 1991, c. 99, §23, is further amended by adding at the end a new paragraph to read:

6
8 Any provision in section 4591 or 4592 related to equal access to public accommodations or indirectly denying access to persons with physical disability does not apply to buildings or facilities constructed specifically as places of public accommodation, in good faith, pursuant to permits from the appropriate governmental authorities authorized at the time of construction to determine whether the construction complies with the requirements of this subchapter. This provision is retroactive to September 1, 1974.

16 **Sec. 2. 5 MRSA §4594-D, sub-§9**, as amended by PL 1991, c. 99, §26, is further amended to read:

20 **9. Waivers; variance.** Builders of facilities governed by subsection 7 may file a petition with the commission requesting a waiver or variance of the standards of construction. If the representative of the commission determines in cases covered by mandatory plan review that compliance with this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to persons with physical disability, it may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

32 Requests for waivers or variances for buildings covered by mandatory plan review are heard by a single representative of the commission designated by the commission and a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

38 **Sec. 3. 5 MRSA §4594-D, sub-§10**, as enacted by PL 1989, c. 795, is amended to read:

40 **10. Appeals.** ~~Commission--decisions~~ Decisions of the representative of the commission on requests for waivers or variances in cases covered by mandatory plan review are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the a decision of the representative of the commission, or it may remand the proceeding to the commission for such further action as the court may direct.

2
4
6
8
10
12
14
16
18
20
22
24

STATEMENT OF FACT

This bill provides an exemption from access requirements for buildings and facilities that were constructed as public accommodations and had received permits at the time of construction from the appropriate authorities that the construction met access standards at the time. The exemption applies to all public accommodation construction since September 1, 1974.

A reading of the current law governing hearings for waivers or variances for required accessibility under the Maine Human Rights Act requires that there be a decision of the Maine Human Rights Commission on these waivers. This outcome was not the original intention of the builders, architects, disability advocacy groups and others who devised the waiver petition scheme and crafted the statutory language. Instead of the approximately 30 days anticipated, requests for waiver decisions under the existing language could take up to 4 or 5 months. This bill clarifies the language so that a designated representative of the commission is responsible for the decision.