

MAINE STATE LEGISLATURE

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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:

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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:

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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
10 facilities constructed specifically as places of public
accommodation, in good faith, pursuant to permits from the
12 appropriate governmental authorities authorized at the time of
construction to determine whether the construction complies with
14 the requirements of this subchapter. This provision is
retroactive to September 1, 1974.

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18 **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
22 waiver or variance of the standards of construction. If the
representative of the commission determines in cases covered by
24 mandatory plan review that compliance with this section and its
rules is not technologically feasible or would result in
26 excessive and unreasonable costs without any substantial benefit
to persons with physical disability, it may provide for
28 modification of, or substitution for, these standards. In all
petitions for variance or waiver, the burden of proof is on the
30 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
34 commission designated by the commission and a designee of the
Office of the State Fire Marshal. A decision must be provided in
36 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
42 **10. Appeals.** ~~Commission--decisions~~ Decisions of the
representative of the commission on requests for waivers or
44 variances in cases covered by mandatory plan review are subject
to review in Superior Court upon petition of the aggrieved party
46 within 30 days after the issuance of the decision for which
review is sought. The court may enter an order enforcing,
48 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.

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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.