

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1531

S.P. 488

In Senate, May 3, 2011

An Act To Amend the Maine Human Rights Act Regarding Accessible Building Standards

Submitted by the Maine Human Rights Commission pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.

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

2 **Sec. 1. 5 MRSA §4593**, as amended by PL 1995, c. 393, §25, is further amended
3 to read:

4 **§4593. Standards for facilities constructed or altered between September 1, 1974**
5 **and January 1, 1982**

6 **1. Public accommodations.** For any building or facility constructed specifically as
7 a place of public accommodation on or after September 1, 1974, but before January 1,
8 1982, or when the estimated total costs for remodeling or enlarging an existing building
9 exceed \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the
10 following standards of construction must be met.

11 A. There must be at least one public walk not less than 40 inches wide with a slope
12 not greater than one foot rise in 12 feet leading directly to a primary entrance.
13 However, after April 1, 1977, the public walk must be not less than 48 inches wide.

14 B. There must be a door at the primary entrance with a clear opening of not less than
15 32 inches and operable by a single effort. If doors at a primary entrance are in a
16 series, they must have a space between them of not less than 84 inches measured
17 from their closed positions; and each must open in the same direction so that swings
18 do not conflict.

19 C. Rest room facilities must have at least one stall that is not less than 4 feet wide, 5
20 feet in depth, a 32-inch wide door that swings out or slides, handrails on each side
21 mounted 33 inches from the floor, and a water closet with a seat 20 inches high.

22 D. Doors that are not intended for normal use, and that are dangerous if a blind
23 person were to enter or exit by them, must be made identifiable to touch by knurling
24 the handle or knob.

25 E. There must be parking spaces designated for persons with physical disability set
26 aside in adequate number and clearly marked for use only by the disabled. Set aside
27 in adequate number means that, for every 25 parking spaces made available to the
28 public on a public or private parking lot, at least one of those spaces must be made
29 available in an appropriate location for parking exclusively used by persons with
30 physical disability.

31 In any building designed and constructed specifically for public accommodations, the
32 bathroom facilities and all accompanying fixtures must be arranged to permit access and
33 use by a person in a wheelchair in at least 1% of the living units. The units must be
34 constructed on ground level and must comply with paragraph C.

35 **2. Places of employment.** For any building or facility constructed specifically as a
36 place of employment on or after September 1, 1974, but before January 1, 1982, or when
37 the estimated total costs for remodeling or enlarging an existing building ~~exceeds~~ exceed
38 \$100,000, and the remodeling or enlarging is begun before January 1, 1982, the public
39 accommodation provisions relating to walks, entries, ~~restroom~~ rest room facilities and
40 doors apply.

1 **Sec. 2. 5 MRSA §4594**, as amended by PL 1991, c. 99, §24, is further amended to
2 read:

3 **§4594. Standards for facilities constructed or altered between January 1, 1982 and**
4 **January 1, 1984**

5 **1. Facilities attested.** This section applies for the following facilities:

6 A. Any building or facility constructed specifically as a place of public
7 accommodation on or after January 1, 1982 but before January 1, 1984, or when the
8 estimated total costs for remodeling or enlarging an existing building exceeds
9 \$250,000 and the remodeling or enlarging is begun after January 1, 1982 but before
10 January 1, 1984; and

11 B. Any building or facility constructed specifically as a place of employment on or
12 after January 1, 1982 but before January 1, 1984, or when the estimated total costs for
13 remodeling or enlarging an existing building ~~exceeds~~ exceed \$100,000; and the
14 remodeling or enlarging is begun after January 1, 1982 but before January 1, 1984.

15 **2. Application.** Facilities subject to this section must meet the requirements of the
16 1981 standards of construction adopted pursuant to Title 25, chapter 331, to implement
17 the following 4 parts of the American National Standards Institute's "Specification for
18 Making Buildings and Facilities Accessible to and Usable by Physically Handicapped
19 People," (ANSI A 117.1-1980):

20 A. 4.3 Accessible Route;

21 B. 4.13 Doors;

22 C. 4.17 Toilet Stalls;

23 D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and

24 E. Parking spaces for use by persons with physical disability in adequate number,
25 pursuant to section 4593, subsection 1, paragraph E.

26 **Sec. 3. 5 MRSA §4594-A**, as amended by PL 1991, c. 99, §25, is further amended
27 to read:

28 **§4594-A. Standards for facilities constructed or altered between January 1, 1984**
29 **and January 1, 1988**

30 **1. Facilities attested.** This section applies to any building or facility constructed
31 specifically as a place of public accommodation on or after January 1, 1984 but before
32 January 1, 1988, or when the estimated total costs for remodeling or enlarging an existing
33 building ~~exceeds~~ exceed \$150,000 and the remodeling or enlarging is begun after January
34 1, 1984 but before January 1, 1988.

35 **2. Application.** Facilities subject to this section must meet the following standards.

36 A. Facilities subject to this section constructed on or after January 1, 1984; but
37 before January 1, 1988 must meet the requirements of the 1981 standards of
38 construction adopted pursuant to Title 25, chapter 331.

1 B. Plans to reconstruct, remodel or enlarge an existing place of public
2 accommodation, when the estimated total cost exceeds \$150,000, are subject to this
3 section when the proposed reconstruction, remodeling or enlargement will
4 substantially affect that portion of the building normally accessible to the public.

5 Facilities subject to this section ~~which~~ that are remodeled, enlarged or renovated on
6 or after January 1, 1984, but before January 1, 1988 must meet the requirements of
7 the following 4 parts of the 1981 standards of construction adopted pursuant to Title
8 25, chapter 331:

9 (1) 4.3 accessible route;

10 (2) 4.13 doors;

11 (3) 4.17 toilet stalls;

12 (4) 4.29.3 tactile warnings on doors to hazardous areas; and

13 (5) Parking spaces for use by persons with physical disability in adequate
14 number, pursuant to section 4593, subsection 1, paragraph E.

15 **Sec. 4. 5 MRSA §4594-B**, as amended by PL 1987, c. 402, Pt. B, §5, is further
16 amended to read:

17 **§4594-B. Standards for facilities constructed or altered between January 1, 1988**
18 **and September 1, 1988**

19 **1. Definitions.** As used in this section, unless the context indicates otherwise, the
20 following terms have the following meanings.

21 A. "Builder" means the applicant for a building permit in a municipality that requires
22 such permits or the owner of the property in a municipality that does not require
23 building permits.

24 B. "Design professional" means an architect or professional engineer registered to
25 practice under Title 32.

26 C. "Standards of construction" means the 1986 standards set forth by the American
27 National Standards Institute in the publication "Specifications for Making Buildings
28 and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A
29 117.1-1986.

30 **2. Facilities attested.** This section applies to any building or facility constructed
31 specifically as a place of public accommodation on or after January 1, 1988; but before
32 September 1, 1988 or when the estimated total costs for remodeling or enlarging an
33 existing building ~~exceeds~~ exceed \$150,000 and the remodeling or enlarging is begun after
34 January 1, 1988 but before September 1, 1988.

35 **3. Application.** Facilities subject to this section ~~shall~~ must meet the following
36 standards.

37 A. Facilities subject to this section constructed on or after January 1, 1988, ~~shall~~ but
38 before September 1, 1988 must meet the standards of construction.

1 B. Plans to reconstruct, remodel or enlarge an existing place of public
2 accommodation, when the estimated total cost exceeds \$150,000, ~~shall be~~ are subject
3 to this section when the proposed reconstruction, remodeling or enlargement will
4 substantially affect that portion of the building normally accessible to the public.

5 Facilities subject to this section ~~which~~ that are remodeled, enlarged or renovated on
6 or after January 1, 1988, ~~shall~~ but before September 1, 1988 must meet the
7 requirements of the following 4 parts of the standards of construction:

- 8 (1) 4.3 accessible routes;
- 9 (2) 4.13 doors;
- 10 (3) 4.17 toilet stalls; and
- 11 (4) 4.29.3 tactile warnings on doors to hazardous areas.

12 **4. Certification; inspection.** The builder of a facility to which this section applies
13 shall obtain a certification from a design professional that the plans of the facility meet
14 the standards of construction required by this section. Prior to commencing construction
15 of the facility, the builder shall submit the certification to:

- 16 A. The municipal authority who reviews plans in the municipality where the facility
17 will be constructed; or
- 18 B. If the municipality where the facility will be constructed has no authority who
19 reviews plans, the municipal officers of the municipality.

20 If municipal officials of the municipality where the facility will be constructed inspect
21 buildings for compliance with construction standards, that inspection shall include an
22 inspection for compliance with the standards required by this section. The municipal
23 officials shall require the facility inspected to meet the construction standards of this
24 section before the municipal officials permit the facility to be occupied.

25 **Sec. 5. 5 MRSA §4594-C**, as enacted by PL 1987, c. 686, §1, is amended to read:

26 **§4594-C. Standards for facilities constructed or altered between September 1, 1988**
27 **and January 1, 1991**

28 **1. Definitions.** As used in this section, unless the context indicates otherwise, the
29 following terms have the following meanings.

- 30 A. "Builder" means the applicant for a building permit in a municipality that requires
31 such permits or the owner of the property in a municipality that does not require
32 building permits.
- 33 B. "Design professional" means an architect or professional engineer registered to
34 practice under Title 32.
- 35 C. "Standards of construction" means the 1986 standards set forth by the American
36 National Standards Institute in the publication "Specifications for Making Buildings
37 and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A
38 117.1-1986.

1 **2. Facilities attested.** This section applies to any building or facility constructed
2 specifically as a place of public accommodation on or after September 1, 1988; but before
3 January 1, 1991 or when the estimated total costs for remodeling or enlarging an existing
4 building exceed \$100,000 and the remodeling or enlarging is begun after September 1,
5 1988 but before January 1, 1991.

6 **3. Application.** Facilities subject to this section ~~shall~~ must meet the following
7 standards.

8 A. Facilities subject to this section; constructed on or after September 1, 1988; ~~shall~~
9 but before January 1, 1991 must meet the standards of construction, except that, in
10 the case of toilet stalls, at least one toilet stall shall be the standard stall configuration
11 pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard
12 stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure
13 30(b).

14 B. Plans to reconstruct, remodel or enlarge an existing place of public
15 accommodation, when the estimated total cost exceeds \$100,000, ~~shall be~~ are subject
16 to this section when the proposed reconstruction, remodeling or enlargement
17 substantially affects that portion of the building normally accessible to the public.

18 Facilities subject to this section ~~which~~ that are remodeled, enlarged or renovated on
19 or after September 1, 1988; but before January 1, 1991 shall meet the requirements of
20 the following 4 parts of the standards of construction:

21 (1) 4.3 accessible routes;

22 (2) 4.13 doors;

23 (3) 4.17 toilet stalls, at least one of which must be a standard toilet stall
24 configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be
25 either standard stall configuration, ANSI Figure 30(a), or alternate stall
26 configuration, ANSI Figure 30(b); and

27 (4) 4.29.3 tactile warnings on doors to hazardous areas.

28 **4. Certification; inspection.** The builder of a facility to which this section applies
29 shall obtain a certification from a design professional that the plans of the facility meet
30 the standards of construction required by this section. Prior to commencing construction
31 of the facility, the builder shall submit the certification to:

32 A. The municipal authority who reviews plans in the municipality where the facility
33 will be constructed; or

34 B. If the municipality where the facility will be constructed has no authority who
35 reviews plans, the municipal officers of the municipality.

36 If municipal officials of the municipality where the facility will be constructed inspect
37 buildings for compliance with construction standards, that inspection ~~shall~~ must include
38 an inspection for compliance with the standards required by this section. The municipal
39 officials shall require the facility inspected to meet the construction standards of this
40 section before the municipal officials permit the facility to be occupied.

1 **Sec. 6. 5 MRSA §4594-D**, as amended by PL 1993, c. 349, §10; c. 410, Pt. X, §§2
2 and 3; and c. 450, §1, is further amended to read:

3 **§4594-D. Standards for facilities constructed or altered between January 1, 1991**
4 **and January 1, 1996**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Builder" means the applicant for a building permit in a municipality that requires
8 such permits or the owner of the property in a municipality that does not require
9 building permits.

10 B. "Design professional" means an architect or professional engineer registered to
11 practice under Title 32.

12 C. "Standards of construction" means the 1986 standards set forth by the American
13 National Standards Institute in the publication "Specifications for Making Buildings
14 and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A
15 117.1-1986.

16 **2. Facilities attested.** This section applies to any building or facility constructed
17 specifically as a place of public accommodation or place of employment on or after
18 January 1, 1991; but before January 1, 1996 or when the estimated total costs for
19 remodeling, enlarging or renovating an existing building exceed \$100,000; and the
20 remodeling, enlarging or renovating is begun after January 1, 1991 but before January 1,
21 1996.

22 **3. Application.** Facilities subject to this section must meet the following standards.

23 A. Places of employment or public accommodation and additions to these places
24 constructed on or after January 1, 1991; but before January 1, 1996 must meet the
25 standards of construction.

26 B. Except for repairs undertaken in accordance with the rules adopted pursuant to
27 subsection 4, when the proposed remodeling or renovation substantially affects that
28 portion of the building normally accessible to the public, places of employment or
29 public accommodation remodeled or renovated on or after January 1, 1991; but
30 before January 1, 1996 must meet the following 5 parts of the standards of
31 construction:

32 (1) 4.3 accessible routes;

33 (2) 4.13 doors;

34 (3) 4.29.3 tactile warnings on doors to hazardous areas;

35 (4) Parking spaces for use by persons with physical disability in adequate
36 number, pursuant to section 4593, subsection 1, paragraph E; and

37 (5) 4.17 toilet stalls, at least one of which must be a standard toilet stall
38 configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within

1 the same toilet room may be either standard stall configuration, ANSI Figure
2 30(a), or alternate stall configuration, ANSI Figure 30(b).

3 **4. Rules.** The commission may adopt, alter, amend and repeal rules designed to
4 make buildings under this section accessible to, functional for and safe for use by persons
5 with physical disability in accordance with subsection 3, and may adopt, alter, amend and
6 repeal rules designed otherwise to enforce this section.

7 **5. Certification; inspection.** The builder of a facility to which this section applies
8 shall obtain a certification from a design professional that the plans meet the standards of
9 construction required by this section. The builder shall provide the certification to the
10 Office of the State Fire Marshal with the plans of the facility. The builder shall also
11 provide the certification to the municipality where the facility exists or will be built.

12 **6. Training, education and assistance.** The commission and the Office of the State
13 Fire Marshal shall, as necessary, develop information packets, lectures, seminars and
14 educational forums on barrier-free design for the purpose of increasing the awareness and
15 knowledge of owners, architects, design professionals, code enforcers, building
16 contractors and other interested parties.

17 **7. Mandatory plan review; certification; inspection.** Builders of the following
18 newly constructed facilities must submit plans to the Office of the State Fire Marshal to
19 ensure that the plans meet the standards of construction required by subsection 3:

- 20 A. Restaurants;
- 21 B. Motels, hotels and inns;
- 22 C. State, municipal and county buildings; and
- 23 D. Schools, elementary and secondary.

24 Fees for reviews are established by the Office of the State Fire Marshal.

25 No building permit may be issued by the municipal authority having jurisdiction to issue
26 these permits unless the Office of the State Fire Marshal approves the plans and certifies
27 that the facility covered by the mandatory plan review meets the standards of construction
28 required by this section; if, however, no decision is rendered within 2 weeks of
29 submission to the Office of the State Fire Marshal, the builder may submit the building
30 permit request directly to the municipality with an attestation that the plans meet the
31 standards of construction.

32 If officials of the municipality in which the facility is constructed, renovated, remodeled
33 or enlarged inspect buildings for compliance with construction standards, that inspection
34 must include an inspection for compliance with the certified plans. The municipal
35 officials shall require that the facility be inspected for compliance with construction
36 standards before the municipal officials permit the facility to be occupied.

37 **8. Voluntary plan review.** Builders of facilities not governed by subsection 7 may
38 submit plans to the Office of the State Fire Marshal to ensure that the plans meet the
39 standards of construction required by subsection 3. Fees for this review may be assessed
40 by the Office of the State Fire Marshal.

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

10 Requests for waivers or variances for buildings covered by mandatory plan review are
11 heard by a designee of the Office of the State Fire Marshal. A decision must be provided
12 in writing to the party requesting the waiver or variance.

13 **10. Appeals.** Decisions of the State Fire Marshal on requests for waivers or
14 variances in cases covered by mandatory plan review are subject to review in Superior
15 Court upon petition of the aggrieved party within 30 days after the issuance of the
16 decision for which review is sought. The court may enter an order enforcing, modifying
17 or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to
18 the State Fire Marshal for such further action as the court may direct.

19 **11. Report.** The commission shall report to the joint standing committee of the
20 Legislature having jurisdiction over judiciary matters by March 1992, regarding the
21 effectiveness of efforts to provide technical assistance and compliance with the standards
22 set forth in this section requiring accessibility by persons subject to this section. The
23 commission shall submit a copy of the report to the Executive Director of the Legislative
24 Council.

25 **Sec. 7. 5 MRSA §4594-F**, as amended by PL 1997, c. 630, §§1 to 4, is further
26 amended to read:

27 **§4594-F. Standards for facilities constructed or altered between January 1, 1996**
28 **and March 15, 2012**

29 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
30 following terms have the following meanings.

31 A. "Alteration" means a change to a place of public accommodation or a commercial
32 facility that affects or could affect the usability of the building or facility or any part
33 of the building or facility, including, but not limited to, reconstruction, remodeling,
34 rehabilitation, historic restoration, changes or rearrangement in structural parts or
35 elements and changes or rearrangement in the plan configuration of walls and full-
36 height partitions.

37 B. "Builder" means the applicant for a building permit in a municipality that requires
38 such permits or the owner of a property in a municipality that does not require
39 building permits.

40 D. "Facility" means all or any portion of buildings, structures, sites, complexes,
41 equipment, rolling stock or other conveyances, roads, walks, passageways, parking

1 lots or other real or personal property, including the site where the building, property,
2 structure or equipment is located.

3 E. "Historic preservation programs" means programs conducted by a public or
4 private entity that have preservation of historic properties as a primary purpose.

5 F. "Historic properties" means those properties that are listed or eligible for listing in
6 the National Register of Historic Places or the State of Maine Register of Historic
7 Places.

8 G. "Maximum extent feasible" applies to the occasional case when the nature of an
9 existing facility makes it virtually impossible to comply fully with applicable
10 accessibility standards through a planned alteration. In these circumstances, the
11 alteration must provide the maximum physical accessibility feasible. Any altered
12 features of the facility that can be made accessible must be made accessible. If
13 providing accessibility in conformance with this section to individuals with certain
14 disabilities would not be feasible, the facility must be made accessible to persons
15 with other types of disabilities.

16 H. "New construction" includes, but is not limited to, the design and construction of
17 facilities for first occupancy after January 1, 1996 or an alteration affecting at least
18 80% of the space of the internal structure of facilities after January 1, 1996.

19 I. "Readily achievable" means easily accomplishable and able to be carried out
20 without much difficulty or expense. In determining whether an action is readily
21 achievable, factors to be considered include:

22 (1) The nature and cost of the action needed under this subchapter;

23 (2) The overall financial resources of the facility or facilities involved in the
24 action, the number of persons employed at the facility, the effect on expenses and
25 resources or other impacts of the action on the operation of the facility;

26 (3) The overall financial resources of the covered entity, the overall size of the
27 business of a covered entity with respect to the number of its employees and the
28 number, type and location of its facilities; and

29 (4) The type of operation or operations of the covered entity, including the
30 composition, structure and functions of the entity's work force, the geographic
31 separateness and administrative or fiscal relationship of the facility or facilities in
32 question to the covered entity.

33 J. "Standards of construction" means the standards set forth in the federal Americans
34 with Disabilities Act Accessibility Guidelines, "ADAAG," standards. The ADAAG
35 standards of construction replace ANSI standards and provide the architectural
36 standards of construction.

37 **2. Facilities attested.** This section applies to any building or facility constructed
38 specifically as a place of public accommodation or place of employment on or after
39 January 1, 1996 but before March 15, 2012 or to any alterations of an existing place of
40 public accommodation or place of employment when the alteration is begun after January
41 1, 1996 but before March 15, 2012, unless such construction or alteration is covered by
42 section 4594-G, in which case section 4594-G and not this section applies. As an

1 alternative to compliance with this section, any new construction or alterations covered
2 by this section may comply with section 4594-G.

3 **3. Application.** Facilities subject to this section must meet the following standards.

4 A. Places of employment or public accommodation and additions to those places
5 constructed on or after January 1, 1996; but before March 15, 2012 the standards of
6 must meet the standards of construction, including, but not limited to, the 5 parts of
7 the standards of construction in paragraph B, subparagraph (2).

8 B. Alterations are governed by the following.

9 (1) Any alteration to a place of public accommodation, commercial facility or
10 place of employment on or after January 1, 1996 but before March 15, 2012 must
11 be made so as to ensure that, to the maximum extent feasible, the altered portions
12 of the facility are readily accessible to and usable by individuals with disabilities,
13 including individuals who use wheelchairs. If existing elements, spaces or
14 common areas are altered, then each altered element, space or area must comply
15 with the applicable provisions of the standards of construction.

16 (2) This subparagraph applies to only buildings remodeled or renovated or to any
17 alterations if the estimated total costs for remodeling or renovating or for
18 alterations to an existing building exceed \$100,000.

19 (a) Except for repairs undertaken in accordance with the rules adopted
20 pursuant to subsection 4, when the proposed alteration substantially affects
21 that portion of the building normally accessible to the public, a place of
22 employment or public accommodation altered on or after January 1, 1996 but
23 before March 15, 2012 must meet the following 5 parts of the standards of
24 construction or as otherwise indicated:

25 (i) 4.3 accessible routes;

26 (ii) 4.13 doors;

27 (iii) Tactile warnings on doors to hazardous areas. Doors that lead to
28 areas that might prove dangerous to a blind person, for example, doors to
29 loading platforms, boiler rooms, stages and the like, must be made
30 identifiable to the touch by a textured surface on the door handle, knob,
31 pull or other operating hardware. This textured surface may be made by
32 knurling or roughening or by a material applied to the contact surface.
33 Textured surfaces may not be provided for emergency exit doors or any
34 doors other than those to hazardous areas;

35 (iv) Parking spaces for use by persons with physical disabilities pursuant
36 to 4.1.2 of the standards of construction; and

37 (v) 4.17 toilet stalls, at least one of which must be a standard toilet stall
38 configuration pursuant to ADAAG figure 30(a). Any additional toilet
39 stalls within the same toilet room may be either standard stall
40 configuration, ADAAG figure 30(a) or alternate stall configuration
41 ADAAG figure 30(b).

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(b) In addition to the 5 parts of the standards of construction specified in division (a), each of which must be met regardless of the cost of the 5 parts of the standards, when the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area to the extent that the costs to provide an accessible path of travel do not exceed 20% of the cost of the alteration to the primary function area.

If the cost to provide an accessible path of travel to the altered area exceeds 20% of the costs of the alteration to the primary function area, the path of travel must be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

In determining whether the 20% cost figure has been met, the following analysis must be used. The analysis must include an evaluation of whether the following elements of access have been provided, using the following order of priority, before costing 20%, regardless of other elements of access that may have been provided which may affect the path of travel:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and
- (vi) When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(3) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building do not exceed \$100,000. When the entity is undertaking an alteration that affects or could affect usability or access to an area of the facility containing a primary function, the entity shall make the alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, where the alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

1 C. This subsection may not be construed to require the installation of an elevator for
2 a facility that is less than 3 stories in height or has less than 3,000 square feet per
3 story unless the facility is a shopping center, a shopping mall, the professional office
4 of a health care provider, a terminal, depot or other station used for specified public
5 transportation or an airport passenger terminal or a facility covered by Title II of the
6 Americans with Disabilities Act or unless the United States Attorney General
7 determines that a particular category of facility requires the installation of elevators
8 based on the usage of the facility.

9 **4. Curb ramps.** Curb ramps or other slopes are required in the following situations.

10 A. Newly constructed or altered streets, roads and highways must contain curb ramps
11 or other sloped areas at any intersection having curbs or other barriers to entry from a
12 street-level pedestrian walkway.

13 B. Newly constructed or altered street-level pedestrian walkways must contain curb
14 ramps or other sloped areas at intersections to streets, roads or highways.

15 **5. Rules.** The commission shall adopt, alter and amend rules designed to make
16 facilities under this section accessible to, functional for and safe for use by persons with
17 physical or mental disabilities in accordance with subsections 3 and 4 and shall adopt,
18 alter and amend rules designed to enforce this section. The commission may repeal only
19 those rules contrary to this chapter. The commission shall also adopt rules concerning
20 procedures and requirements for alterations that will threaten or destroy the historic
21 significance of qualified historic buildings and facilities as defined in 4.1.7(1) and (2) of
22 the Uniform Federal Accessibility Standards, maintaining, at a minimum, the procedures
23 and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility
24 Standards.

25 **6. Barrier-free certification; inspection.** If the costs of construction or alterations
26 are at least \$50,000, the builder of a facility to which this section applies must obtain a
27 certification from an architect, professional engineer, certified interior designer or
28 landscape architect who is licensed, certified or registered to practice under Title 32 and
29 is practicing within the scope of that individual's profession that the plans meet the
30 standards of construction required by this section. The builder shall provide the
31 certification to the Office of the State Fire Marshal with the plans of the facility. The
32 builder shall also provide the certification to the municipality where the facility exists or
33 will be built. Nothing in this section may be construed to change the scope of practice of
34 any individual licensed, certified or registered to practice under Title 32.

35 **7. Training, education and assistance.** The commission and the Office of the State
36 Fire Marshal, with input from organizations representing individuals with disabilities,
37 shall develop, as necessary, information packets, lectures, seminars and educational
38 forums on barrier-free design for the purpose of increasing the awareness and knowledge
39 of owners, architects, professional engineers, certified interior designers, landscape
40 architects, code enforcers, building contractors, individuals with disabilities and other
41 interested parties.

1 **8. Mandatory plan review; certification; inspection.** Builders of newly
2 constructed public buildings shall submit plans to the Office of the State Fire Marshal to
3 ensure that the plans meet the standards of construction required by subsections 3 and 4.

4 A. For purposes of this subsection, "public building" means any building or structure
5 constructed, operated or maintained for use by the general public, including, but not
6 limited to, all buildings or portions of buildings used for:

7 (1) State, municipal or county purposes;

8 (2) Education;

9 (3) Health care;

10 (4) Public assembly;

11 (5) A hotel, motel or inn;

12 (6) A restaurant;

13 (7) Business occupancy; or

14 (8) Mercantile establishments occupying more than 3000 square feet.

15 B. The municipal authority having jurisdiction to issue building permits may not
16 issue a building permit unless the Office of the State Fire Marshal approves the plans
17 and certifies that the public building covered by this subsection meets the standards
18 of construction required by this section. If no decision is rendered within 2 weeks of
19 submission to the Office of the State Fire Marshal, the builder may submit the
20 building permit request directly to the municipality with an attestation from an
21 architect or professional engineer licensed or registered to practice under Title 32 that
22 the plans meet the standards of construction.

23 C. If officials of the municipality in which a restaurant; motel; hotel; inn; state;
24 municipal or county building; or an elementary or secondary school covered by this
25 subsection is constructed, renovated, remodeled or enlarged inspect buildings for
26 compliance with construction standards, that inspection must include an inspection
27 for compliance with the certified plans. The municipal officials shall require that a
28 facility covered by this paragraph be inspected for compliance with construction
29 standards before the municipal officials permit a facility covered by this paragraph to
30 be occupied.

31 **9. Voluntary plan review.** Builders of facilities not governed by subsection 8 may
32 submit plans to the Office of the State Fire Marshal to ensure that the plans meet the
33 standards of construction required by subsections 3 and 4. Certification for a voluntary
34 plan review may be provided by an architect, professional engineer, certified interior
35 designer or landscape architect licensed, certified or registered to practice under Title 32
36 and practicing within the scope of that individual's profession.

37 **10. Waivers; variance.** Builders of facilities governed by subsection 8 that are
38 private entities, when the facilities are not to be owned or operated by, or leased to or by,
39 a public entity, may file a petition with the State Fire Marshal requesting a waiver or
40 variance of the standards of construction. If a representative of the Office of the State
41 Fire Marshal determines, in cases covered by mandatory plan review pursuant to

1 subsection 8, that compliance with this section and its rules is structurally impracticable,
2 the State Fire Marshal may provide for modification of, or substitution for, these
3 standards. In all petitions for variance or waiver, the burden of proof is on the party
4 requesting the variance or waiver to justify its allowance.

5 **11. Appeals relating to mandatory plan reviews.** Decisions of the State Fire
6 Marshal on requests for waivers or variances in cases covered by mandatory plan review
7 under subsection 8 are subject to review in Superior Court upon petition of the aggrieved
8 party within 30 days after the issuance of the decision for which review is sought. The
9 court may enter an order enforcing, modifying or setting aside the decision of the State
10 Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action
11 as the court may direct.

12 **12. Fees.** The Office of the State Fire Marshal shall establish fees for reviews,
13 waivers or variances under this section. The Office of the State Fire Marshal shall pay
14 all fees to the Treasurer of State to be used to carry out this chapter. Any balance of these
15 fees does not lapse but is carried forward as a continuing account to be expended for the
16 same purposes in the following fiscal years.

17 **Sec. 8. 5 MRSA §4594-G** is enacted to read:

18 **§4594-G. Standards for facilities constructed or altered after March 15, 2012**

19 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
20 following terms have the following meanings.

21 A. "Alteration" means a change to a place of public accommodation or a commercial
22 facility that affects or could affect the usability of the building or facility or any part
23 of the building or facility, including, but not limited to, reconstruction, remodeling,
24 rehabilitation, historic restoration, changes or rearrangement in structural parts or
25 elements and changes or rearrangement in the plan configuration of walls and full-
26 height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos
27 removal or changes to mechanical and electrical systems are not alterations unless
28 they affect the usability of the building or facility.

29 B. "Builder" means the applicant for a building permit in a municipality that requires
30 such permits or the owner of a property in a municipality that does not require
31 building permits.

32 C. "Commuter rail transportation" means short-haul rail passenger service operating
33 in metropolitan and suburban areas, whether within or across the geographical
34 boundaries of a state, usually characterized by reduced fare, multiple ride and
35 commutation tickets and by morning and evening peak period operations. This term
36 does not include light or rapid rail transportation.

37 D. "Demand responsive system" means any system of transporting individuals,
38 including the provision of designated public transportation service by public entities
39 and the provision of transportation service by private entities, including but not
40 limited to specified public transportation service, that is not a fixed-route system.

- 1 E. "Designated public transportation" means transportation provided by a public
2 entity other than public school transportation by bus, rail or other conveyance other
3 than transportation by aircraft or intercity or commuter rail transportation that
4 provides the general public with general or special service, including charter service,
5 on a regular and continuing basis.
- 6 F. "Facility" means all or any portion of buildings, structures, sites, complexes,
7 equipment, rolling stock or other conveyances, roads, walks, passageways, parking
8 lots or other real or personal property, including the site where the building, property,
9 structure or equipment is located.
- 10 G. "Fixed-route system" means a system of transporting individuals other than by
11 aircraft, including the provision of designated public transportation service by public
12 entities and the provision of transportation service by private entities, including, but
13 not limited to, specified public transportation service, on which a vehicle is operated
14 along a prescribed route according to a fixed schedule.
- 15 H. "Intercity rail transportation" means transportation provided by the National
16 Railroad Passenger Corporation, doing business as Amtrak.
- 17 I. "New construction" includes, but is not limited to, the design and construction of a
18 facility for first occupancy or an alteration if the cost of the alteration is 75% or more
19 of the replacement cost of the completed facility.
- 20 J. "Specified public transportation" means transportation by bus, rail or any other
21 conveyance other than aircraft provided by a private entity to the general public, with
22 general or special service, including charter service, on a regular and continuing
23 basis.
- 24 K. "Standards of construction" means:
- 25 (1) For a transportation facility, the accessibility standards adopted by the federal
26 Department of Transportation, 49 Code of Federal Regulations, Sections 37.9,
27 37.41, 37.43 and 37.45 (2010);
- 28 (2) For a facility constructed or altered by, on behalf of or for the use of a public
29 entity, other than a transportation facility, the 2010 ADA Standards for
30 Accessible Design, 28 Code of Federal Regulations, Sections 35.104 and 35.151;
31 and
- 32 (3) For a place of public accommodation or a commercial facility, other than a
33 facility covered by subparagraphs (1) or (2), the 2010 ADA Standards for
34 Accessible Design, 28 Code of Federal Regulations, Section 36.104 and Section
35 36.401 to 36.407.
- 36 L. "Transportation facility" means a facility constructed or altered by, on behalf of or
37 for the use of:
- 38 (1) Any public entity that provides designated public transportation or intercity or
39 commuter rail transportation;
- 40 (2) Any private entity that provides specified public transportation; or

1 (3) Any private entity that is not primarily engaged in the business of transporting
2 people but operates a demand responsive system or fixed-route system.

3 **2. Facilities attested.** This section applies to new construction and alterations of
4 transportation facilities, places of public accommodation and commercial facilities and
5 facilities constructed or altered by, on behalf of or for the use of a public entity, if:

6 A. The last application for a building permit or permit extension is certified to be
7 complete by the appropriate state, county or local government entity on or after
8 March 15, 2012;

9 B. In a jurisdiction where the government does not certify completion of
10 applications, the last application for a building permit or permit extension is received
11 by the appropriate state, county or local government entity on or after March 15,
12 2012; or

13 C. If no permit is required, the start of physical construction or alterations occurs on
14 or after March 15, 2012.

15 **3. Unlawful discrimination.** In addition to failure to meet applicable accessible
16 building requirements in subchapter 4, for purposes of this Act, unlawful discrimination
17 includes, but is not limited to:

18 A. For new construction or alterations subject to this section, the failure to meet the
19 standards of construction; and

20 B. For alterations subject to this section in which the estimated total costs for
21 alterations to an existing building exceed \$100,000, and in which the proposed
22 alteration substantially affects that portion of the building normally accessible to the
23 public, the failure of a place of employment or public accommodation altered on or
24 after March 15, 2012 to meet the following 4 parts of the standards of construction:

25 (1) 206 accessible routes;

26 (2) 206.5 doors;

27 (3) 208 parking spaces for use by persons with a physical disability; and

28 (4) 604.8 toilet compartments, at least one of which must comply with 604.8.1.

29 **4. Barrier-free certification.** If the costs of construction or alterations are at least
30 \$50,000, the builder of a facility to which this section applies must obtain a certification
31 from an architect, professional engineer, certified interior designer or landscape architect
32 who is licensed, certified or registered to practice under Title 32 and is practicing within
33 the scope of that individual's profession that the plans meet the requirements of
34 subsection 3. The builder shall provide the certification to the Office of the State Fire
35 Marshal with the plans of the facility. The builder shall also provide the certification to
36 the municipality where the facility exists or will be built. Nothing in this section may be
37 construed to change the scope of practice of any individual licensed, certified or
38 registered to practice under Title 32.

39 **5. Training, education and assistance.** The commission and the Office of the State
40 Fire Marshal, with input from organizations representing persons with disabilities, shall

1 develop, as necessary, information packets, lectures, seminars and educational forums on
2 barrier-free design for the purpose of increasing the awareness and knowledge of owners,
3 architects, professional engineers, certified interior designers, landscape architects, code
4 enforcers, building contractors, persons with disabilities and other interested parties.

5 **6. Mandatory plan review; certification.** A builder of a proposed public building
6 shall submit plans to the Office of the State Fire Marshal prior to construction to ensure
7 that the plans meet the standards of construction.

8 A. For purposes of this subsection, "public building" means any building or structure
9 constructed, operated or maintained for use by the general public, including, but not
10 limited to, all buildings or portions of buildings used for:

11 (1) State, municipal or county purposes;

12 (2) Education;

13 (3) Health care, residential care nursing homes or any facility licensed by the
14 Department of Health and Human Services;

15 (4) Public assembly;

16 (5) A hotel, motel, inn or rooming or lodging house;

17 (6) A restaurant;

18 (7) Business occupancy of more than 3,000 square feet or more than one story;
19 or

20 (8) Mercantile occupancy of more than 3,000 square feet or more than one story.

21 B. The municipal authority having jurisdiction to issue building permits may not
22 issue a building permit unless the Office of the State Fire Marshal approves the plans
23 and certifies that the plans for the public building covered by this subsection meet the
24 standards of construction. If the builder of a facility is required to obtain barrier-free
25 certification, a permit for construction from the Office of the State Fire Marshal is
26 also required. If no decision is rendered within 2 weeks of submission to the Office
27 of the State Fire Marshal, the builder may submit the permit request directly to the
28 municipality with an attestation from an architect or professional engineer licensed or
29 registered to practice under Title 32 that the plans meet the standards of construction.

30 **7. Inspection.** If officials of the municipality in which a restaurant, motel, hotel or
31 inn; state, municipal or county building; or an elementary or secondary school covered by
32 this subsection is constructed, renovated, remodeled or enlarged inspect buildings for
33 compliance with construction standards, that inspection must include an inspection for
34 compliance with plans certified by the Office of the State Fire Marshal or by a
35 professional pursuant to subsection 4. The municipal officials shall require that a facility
36 covered by this paragraph be inspected for compliance with the standards of construction
37 required by subsection 3 before the municipal officials permit a facility covered by this
38 paragraph to be occupied.

39 **8. Voluntary plan review.** Builders of facilities not governed by subsection 6 may
40 submit plans to the Office of the State Fire Marshal to ensure that the plans meet the

1 standards of construction required by subsection 3. Certification for a voluntary plan
2 review may be provided by an architect, professional engineer, certified interior designer
3 or landscape architect licensed, certified or registered to practice under Title 32 and
4 practicing within the scope of that individual's profession.

5 **9. Waivers; variance.** Builders of facilities governed by subsection 6 that are
6 private entities, when the facilities are not to be owned or operated by, or leased to or by,
7 a public entity, may file a petition with the State Fire Marshal requesting a waiver or
8 variance of the standards of construction. If a representative of the Office of the State Fire
9 Marshal determines, in cases covered by mandatory plan review pursuant to subsection 6,
10 that compliance with this section and its rules is structurally impracticable, the State Fire
11 Marshal may provide for modification of, or substitution for, these standards. In all
12 petitions for variance or waiver, the burden of proof is on the party requesting the
13 variance or waiver to justify allowing the variance or waiver.

14 **10. Appeals relating to mandatory plan reviews.** Decisions of the State Fire
15 Marshal on requests for waivers or variances in cases covered by mandatory plan review
16 under subsection 6 are subject to review in Superior Court upon petition of the aggrieved
17 party within 30 days after the issuance of the decision for which review is sought. The
18 court may enter an order enforcing, modifying or setting aside the decision of the State
19 Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action
20 as the court may direct.

21 **11. Fees.** The Office of the State Fire Marshal shall establish fees for reviews,
22 waivers or variances under this section. The Office of the State Fire Marshal shall pay all
23 fees to the Treasurer of State to be used to carry out this subchapter. Any balance of these
24 fees does not lapse but is carried forward as a continuing account to be expended for the
25 same purposes in the following fiscal years.

26 SUMMARY

27 This bill amends the Maine Human Rights Act to update the accessible building
28 requirements in the Maine Revised Statutes, Title 5, chapter 337, subchapter 5 in light of
29 the adoption of the 2010 ADA Standards for Accessible Design by the federal
30 Department of Justice on September 15, 2010.