

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2011

major substantive rule as defined in Title 5, chapter 375, subchapter 2-A;

Sec. 10. 1 MRSA §534, sub-§5, ¶I, as enacted by PL 1997, c. 713, §1, is amended to read:

I. Approve interagency agreements that affect premium electronic services;

Sec. 11. 1 MRSA §535, sub-§2, ¶F, as enacted by PL 1997, c. 713, §1, is amended to read:

F. Develop ~~charges~~ fees for the services provided to users, agencies and subscribers, which must meet the provisions of section 534, subsection 5, paragraph G;

Sec. 12. 1 MRSA §536, sub-§2, as enacted by PL 1997, c. 713, §1, is amended to read:

2. Duplication of fee services. Executive branch and semiautonomous state agencies may not provide services that duplicate premium fee services offered by InforME except as authorized by the board.

Sec. 13. 1 MRSA §536, sub-§3, as amended by PL 2007, c. 37, §6, is further amended to read:

3. Service level agreements. Services provided by the network manager and information to be provided by a data custodian are governed by service level agreements between the network manager and the data custodian. A service level agreement may include a provision for the network manager to receive a portion of the agency fee for information or services in return for electronically providing that information or service. ~~The fee for electronically accessing the information or service may not exceed the agency fee for distributing the information or providing the service in its usual form.~~

Sec. 14. 1 MRSA §537, sub-§1, as repealed and replaced by PL 2007, c. 37, §7, is amended to read:

1. Funding. InforME is self-supporting and may not receive an appropriation or allocation from the General Fund or other state funds.

Revenue is generated through fees ~~or surcharges~~ on services paid by data custodians, subscribers or ~~other~~ users, from contracts with other state departments and agencies and from money, goods or in-kind services donated or awarded to carry out the purposes of this Act.

Sec. 15. 1 MRSA §537, sub-§2, as enacted by PL 1997, c. 713, §1, is amended to read:

2. Fiscal year. InforME's fiscal year begins July January 1st and ends on June 30th December 31st of the next each calendar year.

Sec. 16. 1 MRSA §538, sub-§3, as enacted by PL 1997, c. 713, §1, is repealed and the following enacted in its place:

3. User records. Information in records of the network manager or collected by InforME relating to the identity of or use by users of electronic services is confidential and may be released only with the express permission of the user or pursuant to court order. This subsection does not affect the public record status of any records of data custodians regarding users.

Sec. 17. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 1, section 537, subsection 2 takes effect January 1, 2012.

See title page for effective date, unless otherwise indicated.

CHAPTER 322

S.P. 488 - L.D. 1531

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Application. Facilities subject to this section must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331, to implement the following 4 parts of the American National Standards Institute's "Specification for Mak-

ing Buildings and Facilities Accessible to and Usable by Physically Handicapped People," (ANSI A 117.1-1980):

- A. 4.3 Accessible Route;
- B. 4.13 Doors;
- C. 4.17 Toilet Stalls;
- D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and
- E. Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

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

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

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

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

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

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

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

- (1) 4.3 accessible route;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls;
- (4) 4.29.3 tactile warnings on doors to hazardous areas; and
- (5) Parking spaces for use by persons with physical disability in adequate number, pur-

suant to section 4593, subsection 1, paragraph E.

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

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

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

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

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

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

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

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

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

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

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

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b); and
- (4) 4.29.3 tactile warnings on doors to hazardous areas.

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

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

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

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

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

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

- A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits.
- B. "Design professional" means an architect or professional engineer registered to practice under Title 32.

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

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

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

- A. Places of employment or public accommodation and additions to these places constructed on or after January 1, 1991, but before January 1, 1996 must meet the standards of construction.
- B. Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed remodeling or renovation substantially affects that portion of the building normally accessible to the public, places of employment or public accommodation remodeled or renovated on or after January 1, 1991, but before January 1, 1996 must meet the following 5 parts of the standards of construction:

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.29.3 tactile warnings on doors to hazardous areas;
- (4) Parking spaces for use by persons with physical disability in adequate number, pur-

suant to section 4593, subsection 1, paragraph E; and

(5) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

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

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

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

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

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

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

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

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

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

9. Waivers; variance. Builders of facilities governed by subsection 7 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If the representative of the Office of the State Fire Marshal 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, the State Fire Marshal 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.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by 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.

10. Appeals. Decisions of the State Fire Marshal 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 decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for such further action as the court may direct.

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

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

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

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

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

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

D. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located.

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

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

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

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

I. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an ac-

tion is readily achievable, factors to be considered include:

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

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

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

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

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

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

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

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

B. Alterations are governed by the following.

(1) Any alteration to a place of public accommodation, commercial facility or place of employment on or after January 1, 1996 but

before March 15, 2012 must be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If existing elements, spaces or common areas are altered, then each altered element, space or area must comply with the applicable provisions of the standards of construction.

(2) 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 exceed \$100,000.

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

- (i) 4.3 accessible routes;
- (ii) 4.13 doors;
- (iii) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person, for example, doors to loading platforms, boiler rooms, stages and the like, must be made identifiable to the touch by a textured surface on the door handle, knob, pull or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Textured surfaces may not be provided for emergency exit doors or any doors other than those to hazardous areas;
- (iv) Parking spaces for use by persons with physical disabilities pursuant to 4.1.2 of the standards of construction; and
- (v) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ADAAG figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ADAAG figure 30(a) or al-

ternate stall configuration ADAAG figure 30(b).

(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.

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

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

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

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

5. Rules. The commission shall adopt, alter and amend rules designed to make facilities under this section accessible to, functional for and safe for use by persons with physical or mental disabilities in accordance with subsections 3 and 4 and shall adopt, alter and amend rules designed to enforce this section. The commission may repeal only those rules contrary to

this chapter. The commission shall also adopt rules concerning procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards, maintaining, at a minimum, the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

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

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

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

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

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care;
- (4) Public assembly;
- (5) A hotel, motel or inn;
- (6) A restaurant;
- (7) Business occupancy; or

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

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

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

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

10. Waivers; variance. Builders of facilities governed by subsection 8 that are private entities, when the facilities are not to be owned or operated by, or leased to or by, a public entity, may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 8, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal 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 the variance or waiver to justify its allowance.

11. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 8 are subject to re-

view 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 decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.

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

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

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

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

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

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

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

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

E. "Designated public transportation" means transportation provided by a public entity other than public school transportation by bus, rail or other conveyance other than transportation by aircraft or intercity or commuter rail transportation that provides the general public with general or special service, including charter service, on a regular and continuing basis.

F. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located.

G. "Fixed-route system" means a system of transporting individuals other than by aircraft, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

H. "Intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation, doing business as Amtrak.

I. "New construction" includes, but is not limited to, the design and construction of a facility for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility.

J. "Specified public transportation" means transportation by bus, rail or any other conveyance other than aircraft provided by a private entity to the general public, with general or special service, including charter service, on a regular and continuing basis.

K. "Standards of construction" means:

(1) For a transportation facility, the accessibility standards adopted by the federal Department of Transportation, 49 Code of Federal Regulations, Sections 37.9, 37.41, 37.43 and 37.45 (2010);

(2) For a facility constructed or altered by, on behalf of or for the use of a public entity, other than a transportation facility, the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Sections 35.104 and 35.151; and

(3) For a place of public accommodation or a commercial facility, other than a facility covered by subparagraphs (1) or (2), the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Section 36.104 and Section 36.401 to 36.407.

L. "Transportation facility" means a facility constructed or altered by, on behalf of or for the use of:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; or

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

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

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

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

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

3. Unlawful discrimination. In addition to failure to meet applicable accessible building requirements in subchapter 4, for purposes of this Act, unlawful discrimination includes, but is not limited to, the failure to meet the standards of construction for new construction or alterations subject to this section.

4. Barrier-free certification. If the costs of construction or alterations are at least \$75,000, the builder of a facility to which this section applies must obtain a certification from an architect, professional engineer, certified interior designer or landscape architect who is licensed, certified or registered to practice under Title 32 and is practicing within the scope of that individual's profession that the plans meet the requirements of subsection 3. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built. Nothing in this section may be construed to change the scope of practice of any individual licensed, certified or registered to practice under Title 32.

5. Training, education and assistance. The commission and the Office of the State Fire Marshal,

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

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

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

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care, residential care nursing homes or any facility licensed by the Department of Health and Human Services;
- (4) Public assembly;
- (5) A hotel, motel, inn or rooming or lodging house;
- (6) A restaurant;
- (7) Business occupancy of more than 3,000 square feet or more than one story; or
- (8) Mercantile occupancy of more than 3,000 square feet or more than one story.

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

7. Inspection. If officials of the municipality in which a restaurant, motel, hotel or inn; state, municipal or county building; or an elementary or secondary school covered by this subsection is constructed, renovated, remodeled or enlarged inspect buildings for

compliance with construction standards, that inspection must include an inspection for compliance with plans certified by the Office of the State Fire Marshal or by a professional pursuant to subsection 4. The municipal officials shall require that a facility covered by this paragraph be inspected for compliance with the standards of construction required by subsection 3 before the municipal officials permit a facility covered by this paragraph to be occupied.

8. Voluntary plan review. Builders of facilities not governed by subsection 6 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Certification for a voluntary plan review may be provided by an architect, professional engineer, certified interior designer or landscape architect licensed, certified or registered to practice under Title 32 and practicing within the scope of that individual's profession.

9. Waivers; variance. Builders of facilities governed by subsection 6 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 6, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal 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 the variance or waiver to justify allowing the variance or waiver.

10. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 6 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 decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.

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

Sec. 9. Review and legislation. After reviewing the standards established in that section of this Act that enacts the Maine Revised Statutes, Title 5, section 4594-G, and comparing the standards with those applicable under federal law beginning March 15, 2012, the Joint Standing Committee on Judiciary may report out a bill to the Second Regular Session of the 125th

Legislature implementing recommended changes in the standards.

See title page for effective date.

CHAPTER 323

H.P. 1092 - L.D. 1485

**An Act To Promote
Transparency in the Medicaid
Reimbursement Process**

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

Sec. 1. 22 MRSA c. 603, sub-c. 1-B is enacted to read:

SUBCHAPTER 1-B

MAXIMUM ALLOWABLE COST LIST

§2687. Maximum allowable cost list

1. Comment period. The Department of Health and Human Services, office of MaineCare services shall establish a 17-day written comment period on any proposed change to the state maximum allowable cost list if the change results in a reduction in payment to pharmacies. The written comment period must be held in compliance with the Maine Administrative Procedure Act. A change in the maximum allowable cost list that will result in a reduction in payment to pharmacies may not take effect for at least 30 days and not until 30 days after the office of MaineCare services has completed its response to any written comments. For the purposes of this section, "maximum allowable cost list" means a list of prescription drugs that bases reimbursement on the cost of the generic product.

2. Report. The Department of Health and Human Services, office of MaineCare services shall prepare an annual report that summarizes the number of drugs affected by changes made to the maximum allowable cost list under subsection 1 and the percentage change in payment for those drugs that resulted from changes to the list during the calendar year. The office of MaineCare services shall file the report annually by December 31st with the joint standing committee of the Legislature having jurisdiction over health and human services matters.

3. Rulemaking. The Department of Health and Human Services, office of MaineCare services shall amend its rules to implement the provisions of this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 324

H.P. 1125 - L.D. 1533

**An Act To Provide for a
Method To Remove an Elected
Municipal Official**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, municipalities conduct official business that must be attended to on a daily basis, mostly by a small group of municipal officials; and

Whereas, many small municipalities do not have sufficient charters or ordinances to respond timely to misconduct or malfeasance by their municipal officials; and

Whereas, misconduct or malfeasance by an official in a small municipality that does not have the legal means to address the issue can directly affect the ability of the municipality to conduct its official business, which has a negative effect on the public interest and is of a direct concern to the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 30-A MRSA §2505 is enacted to read:

§2505. Recall of municipal officials

Except as otherwise provided by the municipality's ordinances or charter, an elected official of a municipality may be recalled from office pursuant to this section. For purposes of this section, "official" has the same meaning as section 2604, subsection 2.

1. Petition for recall. On the written petition pursuant to subsection 5 of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election, an election must be held to determine the recall of an elected official of that municipality.

2. Notice of intention. In order to initiate a recall election under subsection 1, the initiator of the petition shall file a notice of intention of recall with the municipal clerk of the municipality. A notice of intention of recall under this subsection must include the name, address and contact information of the person filing the notice and the name and position of the official subject to recall under this section. Only a