

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

June 2012

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STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

<i>CARRIED OVER</i>	<i>carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i>	<i>chapter # of constitutional resolution passed by both houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; legislation died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagreed; legislation died</i>
<i>DIED IN CONCURRENCE</i>	<i>defeated in each house, but on different motions; legislation died</i>
<i>DIED ON ADJOURNMENT</i>	<i>action incomplete when session ended; legislation died</i>
<i>EMERGENCY</i>	<i>enacted law takes effect sooner than 90 days after session adjournment</i>
<i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i>	<i>emergency failed to receive required 2/3 vote</i>
<i>FAILED, ENACTMENT or FINAL PASSAGE</i>	<i>failed to receive final majority vote</i>
<i>FAILED, MANDATE ENACTMENT</i>	<i>legislation proposing local mandate failed required 2/3 vote</i>
<i>HELD BY GOVERNOR</i>	<i>Governor has not signed; final disposition to be determined at subsequent session</i>
<i>LEAVE TO WITHDRAW</i>	<i>sponsor's request to withdraw legislation granted</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>ruled out of order by the presiding officer; legislation died</i>
<i>INDEF PP</i>	<i>indefinitely postponed; legislation died</i>
<i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ...	<i>ought-not-to-pass report accepted; legislation died</i>
<i>P&S XXX</i>	<i>chapter # of enacted private & special law</i>
<i>PUBLIC XXX</i>	<i>chapter # of enacted public Law</i>
<i>RESOLVE XXX</i>	<i>chapter # of finally passed resolve</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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inspected without being compiled or converted. If the agency or official must compile the record for inspection, then the agency or official may charge \$15 per hour, after the first hour, for the time it takes to enable inspection. If the agency or official must convert a public record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge for the actual cost to perform the conversion. The per hour cost for compiling a record is increased from \$10 to \$15, after the first hour.

Chapter 662 clarifies that a request for a public record does not have to be made in writing or in person. An agency or official is not required to create a record that does not exist in response to a request for a public record. An agency or official is not required to provide a requester with access to a computer terminal.

Chapter 662 requires an agency or official to provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

Chapter 662 creates the position of public access officer and requires each state agency, county, municipality, school administrative unit and regional or other political subdivision to designate an existing employee to serve in that capacity as a resource for freedom of access questions. Requests for public records do not have to be made to the public access officer. The public access officer must undergo the same freedom of access training as elected officials.

Chapter 662 requires government agencies, when making purchases of or contracting for computer software and other information technology resources, to consider maximizing public access to public records, as well as maximizing the exportability of public records while protecting confidential information.

Chapter 662 includes funding for a half-time Assistant Attorney General to serve as a Public Access Ombudsman in the Office of the Attorney General. This funding, when combined with funding for a half-time position provided in Public Law 2011, chapter 655, provides funds for one full-time ombudsman position and related All Other costs.

LD 1530

An Act To Amend the Housing Provisions of the Maine Human Rights Act

PUBLIC 613

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HASTINGS	OTP-AM MAJ ONTP MIN	S-465

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill amends the Maine Human Rights Act in order to maintain its substantial equivalency with the federal Fair Housing Act and to update the accessible building requirements in public housing.

Committee Amendment "A" (S-465)

This amendment is the majority report of the Joint Standing Committee on Judiciary.

This amendment revises the definition of "aggrieved person" to apply to persons aggrieved by unlawful housing discrimination differently than it applies to persons aggrieved by other kinds of discrimination under the Maine Human Rights Act. The bill's definition of "aggrieved person" includes any person who claims to have been subjected to unlawful discrimination; this covers unlawful discrimination in employment, housing, public accommodations, credit and education. The amendment alters the definition of "aggrieved person" with regard to

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unlawful housing discrimination to be consistent with federal law: "aggrieved person" includes any person who claims to have been injured by unlawful housing discrimination, which covers persons who may not have been personally subject to unlawful housing discrimination, but who have nonetheless been injured by it.

This amendment adds an effective date of September 1, 2012. The bill was proposed in anticipation of the new building accessibility standards to apply beginning March 15, 2012. By establishing September 1, 2012 as the effective date, this amendment eliminates the need for language to provide for the transition from older building accessibility standards. Thus, the Maine Revised Statutes, Title 5, section 4581-A, subsections 5 and 6, as proposed in the bill, as well as the bill's amendments to Title 5, section 4582-B, are eliminated. All remaining references to March 15, 2012 are changed to September 1, 2012.

This amendment revises the definition of "alteration" to provide guidance as to what forms of normal maintenance, decorating and upgrades do not fall under the updated standards. As long as the altering activities do not affect the usability of the facility, the cost of reroofing, re-siding, painting or wallpapering, replacement of doors or windows, asbestos removal or changes to mechanical and electrical systems, as well as other normal maintenance, is not counted toward the 75% threshold of the replacement cost of the completed facility for purposes of the definition of "new construction" under Title 5, section 4582-C, subsection 1, paragraph E, and the activities do not trigger the accessibility requirements for alterations under Title 5, section 4582-C, subsection 3, paragraph C.

This amendment revises the definition of "standards of construction" to ensure that the appropriate standard is applied to multifamily dwellings and public housing. In general, for multifamily dwellings, Title 5, section 4582-C, subsection 3, paragraph A is intended to require the same level of accessibility as is required by the federal Fair Housing Act, as amended. Under the current 2009 version of American National Standards Institute's ANSI A 117.1, for example, the requirements in Title 5, section 4582-C, subsection 3, paragraph A, subparagraphs (2) and (3) of the bill for dwelling units and sleeping units would be satisfied by complying with the criteria for A 117.1-2009 section 1004, Type B Units. For public housing, the 10% requirements in Title 5, section 4582-C, subsection 3, paragraphs B and C of the bill would be satisfied by complying with the criteria for A 117.1-2009 sections 1002, Accessible Units, or 1003, Type A Units.

This amendment provides that a design professional's statement that the plans of the facility meet the required standards of construction is based on professional judgment and that the statement is based on the plans as they exist at the time the statement is made.

This amendment amends the bill to consistently use the term "unlawful housing discrimination."

This amendment changes the bill to make the language in Title 5, section 4594-A, subsection 2, paragraphs A and B consistent with the changes made by Public Law 2011, chapter 322, section 3.

This amendment provides that, although the bill authorizes punitive damages for unlawful housing discrimination to be consistent with federal law, punitive damages are not available against a governmental entity or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of the employee's employment.

Enacted Law Summary

Public Law 2011, chapter 613 amends the Maine Human Rights Act concerning unlawful housing discrimination.

Chapter 613 revises the definition of "aggrieved person" to apply to persons aggrieved by unlawful housing discrimination differently than it applies to persons aggrieved by other kinds of discrimination under the Maine Human Rights Act. The definition of "aggrieved person" with regard to unlawful housing discrimination is amended to be consistent with federal law: "aggrieved person" includes any person who claims to have been injured by unlawful housing discrimination, which covers persons who may not have been personally subject to unlawful housing discrimination, but who have nonetheless been injured by it.

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Chapter 613 adopts a definition of "alteration" to provide guidance as to what forms of normal maintenance, decorating and upgrades do not fall under the updated standards.

Chapter 613 revises the definition of "standards of construction" to ensure that the appropriate standard is applied to multifamily dwellings and public housing.

Chapter 613 provides that a design professional's statement that the plans of the facility meet the required standards of construction is based on professional judgment and that the statement is based on the plans as they exist at the time the statement is made.

Chapter 613 authorizes punitive damages for unlawful housing discrimination to be consistent with federal law, except that punitive damages are not available against a governmental entity or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of the employee's employment.

Chapter 613 takes effect September 1, 2012.

LD 1546 An Act To Amend the Laws Governing the Deference Afforded to Agency Decisions

MINORITY (ONTP) REPORT

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLOWMAN	OTP-AM MAJ ONTP MIN	

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill requires a court, in an appeal of an agency's interpretation of the statutes in making or administering rules under the Maine Administrative Procedure Act, to conduct a de novo review. The bill also clarifies that, on questions of fact, the court is required to defer to the agency unless the court finds that the agency's findings of fact are unsupported by substantial evidence.

Committee Amendment "A" (S-394)

This is the majority report of the Joint Standing Committee on Judiciary.

This amendment replaces the proposed language concerning the court's review of agency rulemaking to provide that the court, in conducting its review of a rule, is not required to give deference to the agency's interpretation of the statutes applicable to the rulemaking.

This amendment deletes the bill's proposed changes to the Maine Revised Statutes, Title 5, section 9061 and addresses judicial review of adjudicatory decisions under the Maine Administrative Procedure Act by amending Title 5, section 11007, subsection 3.

This amendment revises the provisions concerning the manner and scope of judicial review of final agency action contained in Title 5, section 11007. Current law provides that the court may not substitute its judgment for that of the agency on questions of fact. This amendment does not change that standard. This amendment establishes that the court is not required to give deference to the agency's interpretation of statutes and rules.

This amendment was not adopted.