



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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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**

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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 MRS §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.