



126th MAINE LEGISLATURE

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Legislative Document

No. 155

H.P. 130

House of Representatives, January 31, 2013

An Act To Streamline the Approval of Accessibility Structures

(EMERGENCY)

Reference to the Committee on State and Local Government suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MORRISON of South Portland.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: HAMANN of South Portland, HARLOW of Portland, JONES of Freedom,
KAENRATH of South Portland, LUCHINI of Ellsworth.

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

3 **Whereas,** when a person with a disability requires approval to build a ramp that
4 provides access to that person's dwelling, delay in the approval process can pose
5 significant hardship; and

6 **Whereas,** applying for approval through a municipal board can be a slow process,
7 and this Act allows an application to be made through a municipal code enforcement
8 officer, which could provide a more expeditious proceeding; and

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

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

14 **Sec. 1. 30-A MRSA §4353, sub-§4,** as amended by PL 1997, c. 148, §1, is
15 further amended to read:

16 **4. Variance.** Except as provided in subsections 4-A, 4-B and 4-C and section
17 4353-A, the board may grant a variance only when strict application of the ordinance to
18 the petitioner and the petitioner's property would cause undue hardship. The term "undue
19 hardship" as used in this subsection means:

20 A. The land in question can not yield a reasonable return unless a variance is
21 granted;

22 B. The need for a variance is due to the unique circumstances of the property and not
23 to the general conditions in the neighborhood;

24 C. The granting of a variance will not alter the essential character of the locality; and

25 D. The hardship is not the result of action taken by the applicant or a prior owner.

26 Under its home rule authority, a municipality may, in a zoning ordinance, adopt
27 additional limitations on the granting of a variance, including, but not limited to, a
28 provision that a variance may be granted only for a use permitted in a particular zone.

29 **Sec. 2. 30-A MRSA §4353-A** is enacted to read:

30 **§4353-A. Code enforcement officer; authority for disability structures permits**

31 Notwithstanding section 4353, a municipality may authorize a code enforcement
32 officer to issue a permit to an owner of a dwelling for the purpose of making a dwelling
33 accessible to a person with a disability who resides in or regularly uses the dwelling. If
34 the permit requires a variance, the permit is deemed to include that variance solely for the
35 installation of equipment or the construction of structures necessary for access to or
36 egress from the dwelling for the person with a disability. The code enforcement officer

1 may impose conditions on the permit, including limiting the permit to the duration of the
2 disability or to the time that the person with a disability lives in the dwelling.

3 For the purposes of this section, the term "structures necessary for access to or egress
4 from the dwelling" includes ramps and associated railings, walls or roof systems
5 necessary for the safety or effectiveness of the ramps.

6 For the purposes of this section, "disability" has the same meaning as a physical or
7 mental disability under Title 5, section 4553-A.

8 **Emergency clause.** In view of the emergency cited in the preamble, this
9 legislation takes effect when approved.

10 **SUMMARY**

11 Current law requires a municipal zoning board of appeals to approve the construction
12 of a disability ramp requiring a variance before a permit is issued by a code enforcement
13 officer. This bill allows the code enforcement officer to grant all permits to build a
14 disability ramp, including any structure that requires a variance.