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Chapter F Accessibility of State and State Funded Programs and Activities

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I. STATUTORY AUTHORITY

RI GL 42-51-6 (3) Governor’s Commission on Disabilities - Duties¹, RI GL 37-8-15 Public Buildings Access for People with Disabilities and RI GL 37-8-15.1 Public Buildings – Accessibility of leased or rented facilities for people with disabilities.

II. DEFINITIONS

As used in these regulations:

A. “Accessibility for People with Disabilities Standard” means: the provisions of the RI State Building Code² and the applicable federal accessibility code(s)³

B. “Environmental and communication barriers” means: architectural barriers in facilities and grounds, on roadways, sidewalks and pedestrian crosswalks, and work sites [including equipment]; and communication barriers on video text displays, television programs, telephone and other tele-communications mediums, public address systems, and computers.

C. The terms “Governmental body”⁴, “Public agency”⁵, and “State”⁶ are defined in RI General Law 37-2-7.

D. “The Commission” shall mean the [Governor’s Commission on Disabilities](#)⁷.

E. “State building, public building, state facility or public facility” means any:

1. Permanent structure together with all grounds and appurtenant [accessory or adjunct] structures which are intended to act as offices, laboratories, workshops, courtrooms, hearing or meeting rooms, storage, or other space for carrying on the functions of a state agency;
 2. Auditoriums, meeting rooms, classrooms, or other educational facilities;
 3. Eating, sleeping, medical, dental, or other health care related facilities;
 4. Libraries, museum space for use by the general public or a facility used to house conventions, trade shows, exhibitions, displays, meetings, banquets, and other events as well as facilities related thereto;
 5. Beaches, forests, management areas, campgrounds, scenic overlooks, nature trails, bathhouses, pavilions, playgrounds, fishponds, fish hatcheries, wildlife preserves, blinds, rest areas, picnic grounds, portages, docks, boat ramps, amusement rides, service facilities at state parks and beaches or other recreation facilities;
 6. Public highways, bridges, and highway rest areas; warehouses, and maintenance and repair facilities;
 7. This definition does not include sewers or buildings that are intended solely as storage.
- F. "State agency"⁸ is defined in RI General Law 42-51-9 (3).
- G. "Program or activity"⁹ is defined in 29 U.S.C. Chapter 16 Sec. 794 Nondiscrimination under Federal grants and programs.
- H. "Public entity"¹⁰ is defined in 42 U.S.C. Chapter 126 Sec. 12131 Americans With Disabilities Act Of 1990 and shall include the operators of state funded programs or activities.
- I. "Project Manager" shall mean either the Commission or the state agency the Commission designates to oversee an ADA renovation project.

III. PROGRAM ACCESSIBILITY

- A. No qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity¹¹.
- B. Public entity, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability -(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability¹²--

1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
4. Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
6. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
7. Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

C. Compliance Reports

1. State agencies and operators of state funded programs or activities shall submit an updated listing of facilities they utilize for open meetings, services, programs, or activities to the Commission on the RI Program Accessibility for Persons with Disabilities Survey GCD Form F 1 every fourth (4th) year.
2. The Commission's Accessibility Committee will review the survey results and develop an action plan to relocate public events from inaccessible facilities or renovate those facilities, within sixty business days of receipt.

IV. SITE SELECTION CRITERIA

A. A public entity may not, in determining the site or location of a facility, make selections

1. That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

2. The have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities¹³.
 3. All public entities shall include accessibility of the facility into their site selection criteria, when considering the relocation of programs, services or activities or the initial siting of programs, services or activities.
 4. Public entities shall not relocate or initially locate services in facilities that do not comply with the federal / state accessibility standards.
 5. All public entities shall notify the Commission prior to the determination of final site selections, to arrange for the accessibility survey. The Commission shall conduct an accessibility survey of potential locations of services or activities to ensure compliance with the federal/state accessibility standard.
- B. All public entities shall conduct a self-evaluation of current locations of each program, activity or service to determine whether any exclude an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity.
1. Public entities shall relocate each program, service or activity that is not accessible in at least one location in its service region, to an accessible facility.
 2. Programs, services or activities that are located in state owned facilities that are not accessible shall submit to the Commission a RI Program Accessibility for Persons with Disabilities Survey Form.

V. EXISTING FACILITIES

- A. A public entity shall operate each service, program or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities¹⁴.
- B. State ADA/504 Transition Plan – RI Capital Budget Request for Accessibility
1. In the event that structural changes in facilities are undertaken to comply with the obligations established under V. A. to achieve program accessibility, the Commission’s Accessibility Committee shall:
 - a) Develop and periodically revise the state’s ADA/504 Transition Plan for the removal of environmental and communication barriers¹⁵; and
 - b) Submit the RI Capital Budget Request for Accessibility to the Capital Development Committee annually.

2. The RI Department of Transportation, and any other state agency that has responsibility or authority over streets, roads, or walkways, shall submit, for to the Governor's Commission on Disabilities for inclusion in the State's ADA/504 Transition Plan. a schedule for providing curb ramps or other sloped areas where pedestrian cross curbs, giving priority to walkways serving entities covered by the Americans with Disabilities Act, including state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas¹⁶.

3. The transition plan shall, at a minimum –

- a) Identify physical obstacles in the State of Rhode Island's facilities, that limit the accessibility of its program or activities to individuals with disabilities;
- b) Describe in detail the methods that will be used to make the facilities accessible;
- c) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan goes beyond January 26, 1993, identify steps that will be taken during each year of the transition period.¹⁷

4. The Commission's Accessibility Committee periodically reviews the status of program and employment accessibility in state owned facilities. The Accessibility Committee identifies all state owned facilities that do not conform to the accessibility for people with disabilities standard. Then the Accessibility Committee, with input from the state entities occupying the facilities, identifies all programs and employment opportunities that are inaccessible. Comments from organizations representing individuals with disabilities and consumers (individuals with disabilities) of the services offered in those facilities are solicited. The Committee uses the following criteria to determine the priority of renovations:

- a) Group I. Facilities and Systems housing programs providing direct services primarily to people with disabilities and facilities utilized for open meetings and judicial facilities;
- b) Group II. Facilities and Systems housing programs that provide a direct service to the General Public; and
- c) Group III. Facilities and Systems housing administrative and support services that could, if accessible, expand employment opportunities for workers with disabilities. Within each group, facilities are prioritized using the following criteria:
 - (i) *Significance of service (would it be frequented more than another);*
 - (ii) *Incidence of use;*
 - (iii) *Unique service;*

- (iv) *Duplication of services elsewhere;*
- (v) *Life-sustaining services;*
- (vi) *Effect on quality of life;*
- (vii) *Geographic criteria or regionalization; and*
- (viii) *Service could be rendered by an adjoining office or elsewhere in the facility.*

d) The Committee then considers the potential for operating funds being used to complete renovations (for maintenance or repair of existing access improvements, low cost renovations or equipment with a short life cycle).

e) The Committee prepares a priority list of renovation projects and submits it to the Governor's Commission on Disabilities.

f) The Commission then approves or modifies the list and transmits the list to the Governor for implementation as part of the state's capitol development plan.

C. Awarding Projects:

1. The Commission's Accessibility Committee annually informs the state agency(ies) occupying the facility(ies) to be renovated of the maximum amount available, the specific facilities or parts of facilities as well as the nature of the renovations approved, the time-period in which the project's funding is available and the options for project management. The Accessibility Committee annually revises the ADA/504 Transition Plan and RI Capital Budget for Accessibility (in June/July). Projects not on-schedule could be deobligated and the remaining fund balance transferred to other agencies that demonstrate the ability to complete projects on time.

2. The Accessibility Committee shall issue a ADA Renovation Grant Award letter to the state agency that includes: the specific renovation project number, the award amount (less contingency) by fiscal year(s), the method of payment.

D. Project Management:

1. When the accessibility renovations are a component of a larger project, then the state agency managing that larger project will be responsible for the integration of the accessibility renovations into that project.

2. When the accessibility renovation project is designed and or constructed "in-house" by the state agency that occupies the facility being renovated, that agency will manage the project.

3. For all other projects, the agency that occupies the facility(ies) being renovated shall submit to the Accessibility Project Management Selection GCD Form F 2 indicating whether it or the Commission will manage the project.

E. Development of Bid Solicitation, Scope of Work, and Construction Management:

1. The Commission's staff will approve the bid specification, scope of work during design phase and final plan review.

2. Special Design/Scope of Work Planning:

a) Accessibility renovations to Historic Structures.

A joint committee will be formed whenever a state facility listed on the National Register of Historic Structures needs to be renovated or altered to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with disabilities, while maintaining and protecting the historic significance of the facility. The joint committee will include representatives of:

(i) *The Governor's Commission on Disabilities,*

(ii) *The State Building Commission,*

(iii) *The RI Historic Preservation and Heritage Commission and*

(iv) *The state agency(ies) occupying the facility,*

b) Accessibility renovations involving vertical access.

A joint committee will be formed whenever a state facility needs renovations to elevators or the installation of wheelchair lifts to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with disabilities, while maintaining and protecting the safety of employees and the public. The joint committee will include representatives of:

(i) *The Governor's Commission on Disabilities;*

(ii) *The State Building Commission;*

(iii) *The Department of Labor and Training, Division of Occupational Safety's Elevator Inspection Unit; and*

(iv) *The state agency(ies) occupying the facility.*

c) Accessibility renovations involving fire safety elements.

A joint committee will be formed whenever a state facility needs renovations to fire safety elements to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with disabilities, while maintaining and protecting the safety of employees and the public. The joint committee will include representatives of:

- (i) *The Governor's Commission on Disabilities;*
- (ii) *The State Building Commission;*
- (iii) *The State Fire Marshal's Office; and*
- (iv) *The state agency(ies) occupying the facility.*

3. Once a design contract has been awarded or an in-house design team appointed, the project manager shall establish monthly project meetings with the architects / designers / construction managers for all their projects. The Commission's staff shall attend these meetings.

4. The Commission's staff must approve all change orders.

5. The Commission's Accessibility Committee must also approve any change orders to the initial scope of work or to increase funding.

6. The project manager shall oversee those contracts, approve payments, and accept the completed projects, within the award amount, or seek prior authorization from the Commission's designated staff person to spend the project's contingency, and the Accessibility Committee for amounts over the project's contingency.

7. The State Building Commissioner shall issue certificates of occupancy and then the Commission shall authorize each project's final payment(s).

F. *Project's Fiscal Management:*

1. The project manager shall prepare the bid solicitation, review the proposals and award the architectural / engineering contracts and construction contracts, in accordance with the appropriate purchasing procedures;

2. When the Commission is not the project manager, the Commission and the project manager shall agree on the method of payment, in accordance with the appropriate purchasing procedures.

3. The Commission's staff must inspect and certify the project is completed as specified in the ADA Renovation Grant Award letter, before final payment is distributed.

VI. RAISED LETTER/BRAILLE AND ACCESS DIRECTIONAL SIGNAGE

- A. The Department of Corrections' Industries shall only provide interior signage, disability parking, and exterior access directional signage that conforms with the federal and state accessibility for people with disabilities standards to state and municipal agencies. State agencies (including quasi-governmental corporations) may purchase interior signage, disability parking and exterior access directional signs from Corrections' Industries. State agencies with the in-house capacity to produce their own signage that conforms to the federal and state accessibility for people with disabilities standards may utilize their in-house service;
- B. The Governor's Commission on Disabilities, with the assistance of the Department of Corrections' Industries, shall provide raised letter/Braille signs, disability parking signs and access directional signs to local government and private agencies, employers, and businesses. These signs shall be provided as complementary gifts, for donations that cover the cost of production and handling.
- C. The Commission shall arrange for the purchase and installation of the raised letter signs with Braille initially at all state owned or leased facilities. In all facilities owned or leased by the state, building signage that designates permanent rooms and spaces or provide direction to, or information about functional spaces of buildings shall contain both raised letters and Braille. Once the Commission has installed the initial signs, the state agencies occupying the facility will be responsible for the maintenance or replacement.

VII. NEW CONSTRUCTION AND ALTERATION, OR RENOVATION OF STATE AND STATE FUNDED FACILITIES AND/OR PUBLIC BUILDINGS

- A. All facilities designed¹⁸, constructed¹⁹, or altered²⁰ by, on behalf of, or for the use of a governmental body, public entity, or public agency, must be readily accessible and usable by individuals with disabilities.
1. All newly constructed or altered, streets; roads and highways must contain curb cuts or ramps²¹.
 2. A Joint Committee on Accessibility renovations to Historic Structures, described above in V. E. 2 (a), must determine if it is feasible to provide physical access to historic property. When it is not the State Historic Preservation Officer shall certify the specific accessibility for people with disabilities standards that would threaten or destroy the historic significance of the facility²². All non-threatening accessibility standards will be complied with.
- B. To ensure program and employment access and use by individuals with disabilities is incorporated at the earliest stages into the site plans and building plans:
1. The Commission's staff shall participate in developing the design of all construction, renovation and alteration projects on behalf of or for the use of a state governmental body or public agency.

2. The Commission's staff shall be consulted:

a) Prior to the initial development of site plans and building plans to ensure that both access to and use of the facilities in the most economic manner possible; and

b) Through any and all revisions of the site plan and building plan to actual completion of the project.

C. A state agency may apply to the Commission's staff for a waiver of the provisions of this section. The agency must demonstrate that the proposed design, construction, or alternation does not materially affect accessibility to or usability of the facility. The Commission's staff may only issue a waiver if the alteration work is:

1. Limited solely to electrical, mechanical, or plumbing systems and / or

2. Does not materially affect accessibility to or usability of the facility under accessibility for people with disabilities standards.

D. At the end of twenty (20) business days the waiver is automatically be granted, unless the Commission's staff has:

a) Requested further information, or

b) Denied the waiver request.

E. General renovations or alternations—Whenever a public entity develops plans for the renovation or alternation of the interior layout of a facility (including employee work areas or customer service areas), or expansion of an existing facility, the public entity shall incorporate the removal of all existing environmental and communication barriers to program and employment opportunities throughout that facility, into the funding and construction plans for the facility.

F. New Construction—Whenever a public entity develops plans for the new construction of a facility; the renovation or alternation of the interior layout of the facility (including employee work areas or customer service areas); or expansion of an existing facility, the public entity shall submit its design to the State Building Commission for review to ensure compliance with the State Building Code, including the accessibility for people with disabilities standard.

G. State Funded Facility Construction, Renovations, or Alterations. The Commission and the state agency funding construction, renovation, or alterations to non-state entity facilities, shall establish cooperative agreements regarding the monitoring of accessibility compliance during the development of site plans and building plans through the actual completion of the project(s)."

VIII. ACCESSIBILITY TO OPEN MEETINGS

A. All state agencies shall comply with the provisions of RIGL 42-46-13. "Open Meetings - Accessibility for People with Disabilities" and RI GCD Procedural Regulation Chapter A. Open Meeting - Accessibility for People with Disabilities.

B. The Governor's Commission on Disabilities shall maintain a list of meeting sites that conform to the Open Meeting Accessibility for People with Disabilities Standard. The Governor's Commission on Disabilities shall survey sites not on that list, which state agencies wish to use, and advise the state agency of how to bring the facility into compliance with the code on either a temporary or permanent basis.

IX. FORMS

The Commission's staff shall prepare and revise the forms referenced above, as necessary.

X. ENDNOTES

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

¹ History: Rule proposed on August 25, 1992 Public Hearing on September 21, 1992 Adopted on September 26, 1992 Effective on October 15, 1992 Amendment proposed on November 15, 1996 Public Hearing on December 16, 1996 Adopted Amendment on December 16, 1996 Effective on January 15, 1997 Technical Revision on October 10, 1997 Advertised October 21, 1999 Public Hearing November 22, 1999 Adopted on December 13, 1999 Effective on January 20, 2000 Technical Amendments Adopted on September 13, 2003

² RIGL 23-27.3, SBC 14, SBC 15 and or SBC 17

³ Uniform Federal Accessibility Standard, Americans with Disabilities Act Accessibility Guideline, or the Fair Housing Accessibility Standard.

⁴ RIGL 37-2-7 (11) "Governmental body" shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, including, without limitation, the board of governors for higher education except for purchases which are funded by restricted, sponsored or auxiliary monies for the period through July 1, 1999, as provided for in subdivision (16) of this section, and board of regents - elementary and secondary education or other establishment of the executive, legislative or judicial branch of the state.

⁵ RIGL 37-2-7 (16) "Public agency" shall mean the Rhode Island industrial recreational building authority, the Rhode Island economic development corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the Howard development corporation, the water resources board corporate, the Rhode Island health and education building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality management district commission, Rhode Island telecommunications authority, the convention center authority, Channel 36 foundation, the board of governors for higher education for all purchases which are funded by restricted, sponsored or auxiliary monies, their successors and assigns, and any other body corporate and politic which has been or will be created or established within this state excepting cities and towns. The board of governors for higher education for all purchases which are funded by restricted, sponsored or auxiliary monies shall be included in the definition of "public agency" only through July 1, 1999.

⁶ RIGL 37-2-7 (22) "State" shall mean the state of Rhode Island and any of its departments or agencies and public agencies.

⁷ Governor's Commission on Disabilities

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⁸ “State agency” means any department, division, agency, commission, board, office, bureau, council or authority, either branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

⁹ 29 USC 794 "program or activity" means all of the operations of—

- (1)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
- (B) A local educational agency (as defined in Sec. 8801 of title 20), system of vocational education, or other school system;
- (3)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
 - (i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

¹⁰ 42 USC 126 sec. 12131 Definitions (1)"public entity" means--

- (A) Any State or local government;
- (B) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C) The National Railroad Passenger Corporation, and any commuter authority (as defined in Sec. 103(8) of the Rail Passenger Service Act [45 U.S.C. 502(8)]).

¹¹ 28 CFR 35.149

¹² 28 CFR 35.130 (b)(1)

¹³ 28 CFR 35.130 (b)(4)

¹⁴ 28 CFR 35.150 (a)

¹⁵ 28 CFR 35.150 (d)(1) and RIGL 42-51-6 (3)

¹⁶ 28 CFR 35.150 (d) (2) and RIGL 42-51-6 (3)

¹⁷ 28 CFR 35.150 (d) (3)

¹⁸ 28 CFR 35.151 (c) The standard for design, construction or alternation of facilities shall be The Uniform Federal Accessibility Standard (UFAS) or the Americans with Disabilities Act Accessibility Standard (ADAAG).

¹⁹ 28 CFR 35.151 (a) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.

²⁰ 28 CFR 35.151 (b) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

²¹ 28 CFR 35.151 (e) 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. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

²² 28 CFR 35.151 (d) Alterations to historic properties shall comply, to the maximum extent feasible with the section 4.1.7 of UFAS or ADAAG. If it is not feasible to provide physical access to historic property in a manner that will not threaten or destroy the historic significance of the facility, alternative methods of access shall be provided.