

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1812

S. P. 692

In Senate, January 16, 1980

Referred to the Committee on State Government. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Gill of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Create a Board for Barrier Free Design.

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

Sec. 1. 25 MRSA c. 331, 2nd & 3rd lines, as repealed and replaced by PL 1979, c. 248, § 2, are repealed and the following enacted in their place:

ACCESSIBILITY FOR PHYSICALLY DISABLED

Sec. 2. 25 MRSA § 2701, sub-§§ 1-A and 1-B are enacted to read:

1-A. Barrier free design. "Barrier free design" means the planning and design of buildings and facilities to provide safe, independent and appropriate use of the built environment by all people regardless of their physical disability.

1-B. Board. "Board" means the Maine Board for Barrier Free Design.

Sec. 3. 25 MRSA § 2701, sub-§ 2, ¶ A, as enacted by PL 1977, c. 80, § 2, is amended to read:

A. A structure to which the public customarily has access and utilizes and which is constructed, in whole or in part, with funds of the State or its political subdivisions; or

Sec. 4. 25 MRSA § 2701, sub-§ 2, ¶ B, sub-¶ (2), as enacted by PL 1977, c. 80, § 2, is amended to read:

(2) As public housing, and which is ~~constructed, in whole or in part, with either state or federal funds~~ includes a minimum of 10 family units.

Sec. 5. 25 MRSA § 2701, sub-§ 2-A. is enacted to read:

2-A. Code. "Code" means the Maine Code for Barrier Free Design as created under this chapter.

Sec. 6. 25 MRSA § 2701, sub-§ 4, as enacted by PL 1977, c. 80, § 2, is repealed.

Sec. 7. 25 MRSA § 2702, as last amended by PL 1979, c. 248, §§ 4-9, is further amended by adding at the end a new paragraph to read:

This section is repealed on July 1, 1981.

Sec. 8. 25 MRSA § 2703, as last amended by PL 1979, c. 248, § 10, is repealed.

Sec. 9. 25 MRSA § 2704, as enacted by PL 1977, c. 80, § 4, is repealed.

Sec. 10. 25 MRSA §§ 2705-2713 are enacted to read:

§ 2705. Board for Barrier Free Design

1. Created. There is hereby created the Maine Board of Barrier Free Design which is responsible for carrying out the purposes of this chapter. The board shall be located for administrative purposes within the Department of Public Safety. Other departments and agencies of the State or its political subdivisions shall assist where appropriate in the implementation of this chapter.

2. Members. The board shall consist of:

A. The following 7 voting members to be appointed by the Governor:

- (1) Four physically disabled persons who have demonstrated an understanding of and a commitment to barrier free design;
- (2) One person who is a nominee of groups within the State which are representative of the interests of the construction industry;
- (3) One registered engineer; and
- (4) One registered architect; and

B. The following 3 nonvoting members, or their designees, to serve ex officio:

- (1) The Commissioner of Public Safety;
- (2) The Commissioner of Human Services; and
- (3) The Commissioner of Finance and Administration.

3. Terms. Of the members first appointed, 3 shall serve for 2 years each, 2 for 3 years each and 2 for 4 years each. Thereafter, the Governor shall appoint members for 4-year terms. The Governor shall fill a vacancy, in the same manner as the original appointment, for the balance of the unexpired term. The Governor

may dismiss any member for cause. No voting member may serve more than 3 consecutive terms.

4. Meetings; quorum; compensation. The board shall meet as soon as practicable after appointment and elect one of its appointed members as chairman, who shall serve for a term of 2 years and until a successor is elected. The board shall meet not less than 6 times annually and at such other times as may be designated by the chairman. Four voting members of the board shall constitute a quorum at all meetings. The members shall each receive \$30 per day for their services and shall be reimbursed for necessary expenses incurred in the performance of their duties.

5. State Fire Marshal assistance. The board may engage the services of the State Fire Marshal's office, which may employ, subject to the Personnel Law, an architectural barrier review specialist and a clerical assistant. These employees shall be under the jurisdiction of the State Fire Marshal's office.

6. Professional assistance. When required, the board may enter into contracts for professional and expert assistance to enable it to discharge its responsibilities under this chapter.

§ 2706. Duties of board

The board shall:

1. Rules. Promulgate rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, relating to:

- A. The submission and review of plans and specifications and the issuance of certificates of compliance, in accordance with section 2709;
- B. The issuance of variances in accordance with section 2710; and
- C. Any other matter necessary for the implementation of this chapter;

2. Code. Formulate, publish and enforce a Code for Barrier Free Design, in accordance with section 2707;

3. On-site review. Conduct on-site review, in accordance with section 2712;

4. Complaints. Receive, process and investigate complaints from any person alleging a violation of any provision of this chapter;

5. Assistance. Provide technical assistance to designers, architects, building inspectors, builders and others, and enhance the understanding of the Code on the local level;

6. Symbol of access. Issue the international symbol of access, in accordance with section 2711;

7. Studies. Conduct studies, hold hearings, publish reports and recommend legislation relating to the accessibility and utilization of buildings and facilities by disabled persons; and

8. Enforce chapter. Enforce the provisions of this chapter.

§ 2707. Code for Barrier Free Design

1. Board to promulgate. The board shall promulgate a Code for Barrier Free Design which shall be designed to eliminate environmental barriers and to encourage, facilitate and promote the accessibility and utilization of buildings and facilities by disabled persons.

2. Code to be restricting. The board shall make the Code at least as restrictive as the American National Standards Institute Specifications A 117.1-1961 (R 1971), as amended, and shall regularly amend it so as to reflect technological advances, research evidence and the changing need of persons with a physical disabilities.

3. Date for Code. The board shall promulgate the Code, and it shall be in effect, on or before July 1, 1981, and if in effect prior to July 1, 1981, the standards of construction under section 2702 shall no longer control.

4. Publication. The board shall publish the Code and make copies available at cost to architects, engineers, contractors, state and local building inspectors and commissioners, state and local public works officials, municipal officers and other interested groups or individuals.

§ 2708. Scope of chapter

1. Construction. No person may undertake the construction of any building without first obtaining a permit from the board of State Fire Marshal's office in accordance with section 2709.

2. Reconstruction, remodeling. No person may reconstruct, remodel or enlarge an existing building, when the estimated cost exceeds \$100,000 and the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public, without first obtaining a written permit from the board or the State Fire Marshal's office in accordance with section 2709.

3. Use of buildings. No person may use a building which has been constructed, reconstructed, remodeled or enlarged and which is subject to the provisions of this chapter, unless the board has issued a certificate of compliance, in accordance with section 2709.

§ 2709. Review of plans; permits; certificate of compliance

1. Filing. Plans and specifications for all construction, reconstruction, remodeling or enlarging of any building for which a permit from the board is required shall be filed with the board or the State Fire Marshal's office for review.

2. Permit. If plans and specifications meet with the requirements of this chapter or the standards, Code and rules promulgated under this chapter, the

board or State Fire Marshal's office shall issue a permit authorizing the work to commence.

3. **Certificate.** Upon completion of any permitted construction, reconstruction, remodeling or enlarging of any building subject to this chapter and prior to the use of any building subject to this chapter, the board or its designee shall inspect the work done and issue a certificate of compliance, if the building meets the requirements of all standards, Code or rules promulgated under this chapter, or if a variance has been obtained under section 2710.

§ 2710. Variances

1. **Application.** Upon proper application, the board may grant a variance from any provision of the Code or from any standard of this chapter. The application shall be accompanied by a statement of reasons for the request and a proposal setting forth the maximum extent to which it is believed practical to comply with this chapter. The application shall include all relevant data required by the board that may be helpful in evaluating the request for variance. The architect, engineer or builder in charge of planning the project shall certify as valid all data submitted.

2. **Standard.** The board may not grant a variance under this section unless the applicant demonstrates, by clear and convincing evidence, that a compelling interest outweighs the need to remove environmental and architectural barriers.

3. **No variance.** The board may not grant a variance under this section in the case of buildings and facilities constructed, purchased, leased or rented in whole or in part by the use of state funds or the funds of any political subdivision of the State, except that variances may be granted for historical buildings and monuments, as defined by the board or as recognized in the National Historical Register.

§ 2711. International symbol

The board shall issue, for display at the entrance of all buildings meeting the requirements of this chapter, the international symbol of access, as adopted by the Rehabilitation International's World Congress in 1969.

§ 2712. On-site review

The board, or any person it may designate, may conduct on-site inspections of buildings subject to this chapter to ensure compliance with this chapter or any standards, Code or rules adopted under this chapter.

§ 2713. Enforcement; penalties

1. **Board to enforce.** In accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, the board may hold hearings, issue subpoenas and issue orders to compel compliance with this chapter and any standards, Code or rules adopted under this chapter, and the provisions of this chapter in existence prior to the effective date of this section.

2. Penalty. Any person who knowingly violates any provision of this chapter, or any permit, standard, Code or rule adopted under this chapter, commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 shall be adjudged for each day of violation.

Sec. 11. P&SL 1975, c. 19 is repealed.

Sec. 12. **Appropriation.** The following funds are appropriated from the General Fund to carry at the purposes of this Act.

	1980-81
PUBLIC SAFETY, DEPARTMENT OF	
Positions	(2)
Personal Services	\$25,084
All Other	9,036
Capital Expenditures	6,647
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Total	\$40,767

STATEMENT OF FACT

The purpose of this bill is to create a Maine Board for Barrier Free Design which would promulgate and enforce a Code. The Code would replace and update certain standards of construction presently in force, which are designed to secure the accessibility to certain buildings and facilities by disabled persons.

The board would be authorized to issue permits and certificates of compliance for buildings meeting the provisions of the Code. No building subject to the Code could be constructed, reconstructed or remodeled without a proper permit. Prior to issuing any permit, the board would review plans and specifications of the building.