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MAINE
PEOPLE WITH DISABILITIES ACCESS COMMISSION
REPORT

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AUGUSTA, MAINE

January 30, 1995

Senator Peter Mills, Chair
Representative Sharon Treat, Chair
Joint Standing Committee on Judiciary

Senator Jane Amero, Chair
Legislative Council

✓ Sally Tubbesing, Executive Director
Legislative Council

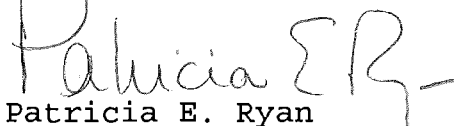
State House Station 115
Augusta, Maine 04333

Dear Senator Mills, Representative Treat, Senator Amero, and Ms. Tubbesing:

On behalf of the People with Disabilities Access Commission, I am pleased to submit this report and proposed legislation as required by chapter 73, Resolves. Pursuant to Section 7, the Commission is required to present its findings and recommended legislation to the joint standing committee having jurisdiction over judiciary matters, the Chair of the Legislative Council and the Executive Director of the Legislative Council by February 1, 1995. We are pleased to have met this deadline, and believe that the proposed legislation which incorporates provisions of the Maine Human Rights Act and the Americans with Disabilities Act into one statute will be to the benefit of persons with disabilities and those who must comply with state and federal requirements.

The efforts of members of the Access Commission to complete the mandate within the time frame established has been impressive. All members participated fully, shared ideas and concerns of the interests they represented, and were able to reach a unanimous position with regard to the legislation submitted. I believe that this legislation represents the fulfillment of the major charge to the Commission, and that its adoption will allow state law to be certified as complying with the access provisions of the Americans with Disabilities Act; establish one set of standards for construction; and provide a more efficient and cost effective process for review and compliance with accessibility requirements. At the same time, the proposed revisions to the employment sections will allow Maine law to continue to be certified as being substantially equivalent.

Best regards,



Patricia E. Ryan
Chair, People with Disabilities
Access Commission

MAINE=
HUMAN
RIGHTS
COMMISSION

State House Station 51
Augusta, Maine 04333

Executive Director
PATRICIA E. RYAN

Commission Counsel
JOHN E. CARNES

REPORT OF THE PEOPLE WITH DISABILITIES ACCESS COMMISSION

The People with Disabilities Access Commission "Access Commission" was established in April 1994 by Resolve (Chapter 73). The charge to the Commission was threefold, and is summarized below.

THE CHARGE

(1) to review and compare the Americans with Disabilities Act (ADA) with state laws and rules concerning access;

(2) to recommend changes in state laws and rules to ensure that compliance with state law will meet at least the minimum requirements of federal law, so that state law can be certified as complying with the ADA and businesses may have a more efficient and cost effective process for review and approval of construction plans with respect to both state and federal laws; and,

(3) to plan for implementation to meet needs of people with disabilities and businesses and others required to comply.

A copy of the Resolve is attached to the Report.

APPOINTMENTS AND ORGANIZATION

The Resolve specified membership to the Commission. Seven members were appointed by the Governor; four by the President of the Senate; and four by the Speaker of the House of Representatives. Two members, including the Chair, were specified by the Resolve. A list of members, who they represented, and appointing authorities is appended to this Report.

Appointments were made in July 1994, and the first organizational meeting was held on July 14, 1994. Two subcommittees were established -- one to deal with integration of the employment provisions of the Maine Human Rights Act and the Americans with Disabilities Act; and one to deal with integration of the access provisions of the Maine Human Rights Act and the Americans with Disabilities Act. The Access Commission felt that these were the two most significant areas where work should be undertaken to fulfill the goal of the Resolve.

Each subcommittee met numerous times between July 1994 and January 1995 in developing the recommended legislation that accompanies this Report.

In addition, the full Access Commission met with officials of the U.S. Department of Justice in August 1994 to begin discussions about Maine's effort to achieve certification so that businesses would have a more efficient and cost effective process for

compliance with federal and state access law. Members of the access subcommittee met with representatives of the business community in December 1994 to seek input and discuss proposed access changes and legislation.

The full Access Commission met several times between July and December 1994 to become apprised of each subcommittees' progress and met again in January 1995 to discuss and adopt the Report and proposed legislation.

THE LEGISLATION AND THE REPORT

The Access Commission is required by the Resolve to submit a Report and proposed legislation to the Legislative Council and Joint Standing Committee on Judiciary by February 1, 1995, and we are pleased to have met this deadline. In focusing our efforts to comply with this requirement, however, we were not able to complete the charge of reviewing and comparing the entire ADA with all state laws and rules concerning access for persons with disabilities (see Resolve Sec. 1 (1)) or of fully meeting the charge of planning for implementation, including development of resources and financing (see Resolve Sec. 1 (3)).

Thus, the Access Commission did not fully incorporate provisions of Title II of the ADA (State and Local Government), Title IV (Telecommunications) or Title V (Miscellaneous), nor did the Access Commission incorporate the provisions relating to public transportation in Titles II & III of the ADA. In addition the Access Commission is aware that there are numerous other state laws, including Title 25 (construction of public buildings), state liquor laws, laws regarding bathrooms, municipal codes, and others that have an impact on or conflict with access.

The proposed draft legislation incorporates the more stringent requirements of the ADA together with the more stringent requirements of the Maine Human Rights Act. The Access Commission did not incorporate any revisions which expanded the requirements of either existing federal or state law. There were issues discussed at length, however, which deserve further attention and resolution.

UNRESOLVED ISSUES

Among these unresolved issues are:

(1) Mandatory Plan Review

Currently, mandatory plan review is required under the Maine Human Rights Act for four categories of new construction. Mandatory plan review allows owners and builders to know that the buildings they are constructing meet required standards of construction for access, and presents them with, upon approval of plans, a rebuttable defense to a charge of unlawful discrimination. Mandatory plan review seeks to assure that building plans are

designed in compliance with the laws governing accessibility. Mandatory plan review can also be viewed as a requirement placed upon owners and builders that is burdensome and a mandate they wish to be without.

(2) Waivers and Variances

Currently under the Maine Human Rights Act, the owner or builder of certain buildings subject to mandatory plan review may request a waiver or variance from the access standards if compliance is "not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to persons with disabilities." No waivers or variances are allowed for buildings not subject to mandatory plan review. The ADA does not require mandatory plan review, and does not have any provision for waivers and/or variances. Concern was expressed by some that there was no intermediate step of relief should owners or builders not agree with the determination of the enforcement authority regarding the granting of a waiver or variance. Currently, the appeal is directly to the Superior Court. The balancing of these interests needs to be further discussed in the policy context.

(3) Elevators

The Maine Human Rights Act requires elevators in all buildings that are two stories or more. The ADA requires elevators in all buildings that are three stories or more (offices of health care professionals, shopping malls, and transportation terminals must have elevators in two story buildings). There was much discussion regarding eliminating the requirement of a commercial elevator in some two story buildings, allowing for alternative vertical access, and/or allowing elevators that were less than commercial grade in some buildings. There was concern expressed that any lessening of the current state elevator requirement would weaken protection for people with disabilities.

A continuation of discussion of this issue, along with mandatory plan review and waivers is necessary.

Finally, it should be noted that recommendations were not made regarding changes in state rules concerning access. Until changes are made in the law, this portion of the charge to the Access Commission cannot be carried out.

CONTINUATION

The assurance of non discrimination for people with disabilities coupled with the legitimate business interests of employers and building owners is a challenge and opportunity that continues even as this Report is submitted. There is a great deal of work to be done. The creation, and product, of the Access Commission, has demonstrated the success of bringing together members representing various interests and viewpoints. There is a willingness to continue this effort.

PEOPLE WITH DISABILITIES ACCESS COMMISSION

DESIGNATED BY RESOLVE:

Patricia E. Ryan, Chair
Executive Director, Human Rights Commission

Stephen Dodge, Vice Chair*
Office of the State Fire Marshal

APPOINTED BY THE GOVERNOR

Nancy D. Gray, Freeport
(representing restaurants & innkeepers statewide)

Jack Kelly, Bangor
(representing the construction industry)

Robin Lambert, Portland
(representing large business)

Marianne McGettigan, Esq. Freeport
(representing business)

Jim McGregor, Augusta
(representing statewide organization of business
interests)

John Morris, Camden
(representing design professionals)

Laurel Shippee, Augusta, Chair, Employment sub-comm.*
(representing State Government as an employer &
provider of services)

APPOINTED BY THE PRESIDENT OF THE SENATE

David M. Cann, Portland
(representing agencies for people with disabilities)

Patricia Ender, Esq., Augusta
(representing agencies for people with disabilities)

Sharon Miller, Esq., Augusta, Chair, Access sub-comm.*
(representing the protection & advocacy agency designated
by 5 M.R.S.A. ss19502)

Margaret Rice, Lincolnville,
(representing labor interests)

APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Ron Hanson, Augusta
(representing persons with disabilities)

Pauline LaMontagne, Esq., Augusta
(representing persons with disabilities)

William H. Nye, Cumberland Center
(representing persons with disabilities)

George Soucy, Jr., Augusta
(representing code enforcement officers)

*elected by the Commission

APPROVED

CHAPTER

APR 15 '94

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BY GOVERNOR

RESOLVES

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-FOUR

—
H.P. 1321 - L.D. 1783

**Resolve, Establishing the People with
Disabilities Access Commission**

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

Whereas, the commission created by this resolve needs to begin its work as soon as possible to deal with the complexity of its charge and to meet the reporting date; and

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

Sec. 1. Commission created and charged. Resolved: That there is established the People with Disabilities Access Commission, referred to in this resolve as the "commission." The commission shall:

1. Review and compare the federal Americans with Disabilities Act of 1990 with state laws and rules concerning access for persons with disabilities, including the Maine Human Rights Act and provisions of the Maine Revised Statutes, Title 25;

2. Recommend changes in state laws and rules needed to ensure that compliance with state law will meet at least the minimum requirements of federal law, so that state law can be

certified by the United States Department of Justice as complying with the federal Americans with Disabilities Act of 1990 and, in part, so that, with respect to standards of construction relating to access for people with disabilities, businesses may have a more efficient and cost-effective process and a "one-stop shopping" location at the Office of State Fire Marshal for review and approval of construction plans with respect to both state and federal access laws; and

3. Plan for implementation, including development of resources and financing, to meet the needs of people with disabilities and the needs of businesses and others required to comply with the laws pertaining to access for persons with disabilities; and be it further

Sec. 2. Appointment. Resolved: That the commission consists of 17 members appointed in the following manner:

1. One member representing design professionals, appointed by the Governor;

2. Four members representing business interests, who may come from statewide organizations of business interests in the State, including one from a large business, one from a small business and one representing restaurants and innkeepers, appointed by the Governor;

3. One member representing the construction industry, appointed by the Governor;

4. One member representing State Government as an employer and provider of services, appointed by the Governor;

5. One member representing labor interests, appointed by the President of the Senate;

6. One member representing code enforcement officers, appointed by the Speaker of the House of Representatives;

7. Six members representing the interests of persons with disabilities, 3 of whom are persons with disabilities, appointed by the Speaker of the House of Representatives and 3 of whom are from agencies who represent people with disabilities, appointed by the President of the Senate, provided that one of the agencies is the protection and advocacy agency designated by the Governor under the Maine Revised Statutes, Title 5, section 19502;

8. The Executive Director of the Maine Human Rights Commission, or the executive director's designee, who serves as the commission's chair; and

9. The State Fire Marshal, or the State Fire Marshal's designee.

All appointments must be made within 30 days of the effective date of this resolve; and be it further

Sec. 3. Chair. Resolved: That the chair shall call the first meeting of the commission as soon as funding permits. At the first meeting or a subsequent meeting, the commission may select a vice-chair from among its members and establish programmatic and structural committees; and be it further

Sec. 4. Meetings. Resolved: That the commission may meet as often as necessary; and be it further

Sec. 5. Staffing. Resolved: That, if funding permits, the commission may employ staff as needed and may contract for administrative, professional, legislative drafting and clerical services; and be it further

Sec. 6. Funding. Resolved: That the commission may seek, accept and expend outside sources of funding to carry out the commission's activities. The Maine Human Rights Commission shall administer any outside funds acquired for the purposes of this resolve. Funds may not be appropriated from the General Fund for the purposes of this resolve; and be it further

Sec. 7. Report. Resolved: That the commission shall present its findings and any recommended legislation to the joint standing committee having jurisdiction over judiciary matters, the Chair of the Legislative Council and the Executive Director of the Legislative Council by February 1, 1995; and be it further

Sec. 8. Compensation. Resolved: That the members of the commission may determine whether expenses may be paid to members from funds accepted by the commission; and be it further

Sec. 9. Allocation. Resolved: That the following funds are allocated from Other Special Revenue funds to carry out the purposes of this resolve.

1994-95

MAINE HUMAN RIGHTS COMMISSION

Persons with Disabilities Access Commission

All Other

\$10,000

Provides funds to the Persons with Disabilities Access Commission for contracted staff and for miscellaneous commission expenses.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.