ENROLLED

SENATE BILL NO. 225

(By Senators Ash and Stapleton)

PASSED February 26, 1987
In Effect July 1, 1987
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Senate Bill No. 225  
(By Senators Ash and Sharpe)  

[Passed February 26, 1987; to take effect July 1, 1987.]  

AN ACT to amend and reenact sections one, two, three, four, five and six, article ten-f, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article ten-f by adding thereto a new section, designated section seven, all relating to physically disabled persons and access to public use buildings, facilities and travel-ways to and from the same; purpose, definitions, applications and exclusions under article; creating state structural barriers compliance board: its membership, terms, meetings, expense reimbursement, and powers and duties; requirements for final plan certification, relief from requirements, and coordination with state fire marshal; required review and approval by state fire marshal and on specified standard basis even prior to appointment of board members or promulgation of any rules and regulations, and in absence of other authorized certification on such basis; preparation, approval and promulgation of rules and regulations of the board; applicable effective date; and subjecting of board to sunset, after performance audit, after specified date.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and six, article ten-f, chapter eighteen of the code of West Virginia, one thousand nine
Enr. S. B. No. 225]

hundred thirty-one, as amended, be amended and reenacted; and
to further amend said article ten-f by adding thereto a new
section, designated section seven, all to read as follows:

ARTICLE 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS
AND FACILITIES.

§18-10F-1. Purpose; definition of “public use building or
facility”.

1 It is hereby declared to be the public policy of this state
2 that all public use buildings, sidewalks, curbs and facilities
3 covered by this article, as specified in section two of this
4 article, be accessible to and functional for the physically
5 disabled, without loss of function, space or facilities insofar
6 as the general public is concerned.
7 As used in this article, a public use building or facility is
8 one to which the public has a general right of access and
9 includes the ways of travel to and from the same, but does
10 not include:
11 (1) Apartment houses with less than twenty units, row
12 houses, rooming houses or single-family dwellings;
13 (2) Garages, hangars or boat houses;
14 (3) Buildings classified as hazardous occupancies;
15 (4) Warehouses;
16 (5) Buildings specifically built for field service purposes
17 such as, but not limited to, conservation fire towers, fish
18 hatcheries or tree nursery buildings; or
19 (6) Residence halls at colleges or universities which
20 have one or more resident halls so constructed as to allow
21 physically disabled persons reasonable means of access and
22 use of such buildings.

§18-10F-2. Application of article.

1 The provisions of this article and the reasonable rules and
2 regulations promulgated hereunder shall apply to all new
3 construction and all substantial-renovation construction
4 wherein values of fifty percent or more of the existing
5 market value of the building or facility will be added, and
6 whether such are temporary, emergency or permanent
7 buildings, facilities or travel-ways to and from the same, to
8 be used by the general public, either privately or publicly
9 owned, and in connection with which such construction is
10 begun after the effective date of this article creating the new
11 state structural barriers compliance board.
§18-10F-3. Rules and regulations.

(a) In order to implement the provisions of this article, the structural barriers compliance board shall be responsible for approving and promulgating reasonable rules and regulations which shall be prepared and approved by the state fire marshal and based on the American National Standards Institute's specifications for making buildings and facilities accessible to and usable to physically disabled persons. The structural barriers compliance board in promulgating rules and regulations, shall take into account the following:

1. Use of buildings, sidewalks, curbs and facilities by persons confined to wheelchairs, persons using crutches or other walking aids, persons afflicted by sight or hearing loss, persons disabled by age and any other persons whose mobility is limited;
2. Frequency of use by physically disabled persons as above enumerated;
3. Requirements of the state fire code for the safety of the mobility impaired; and
4. Additional construction cost required to comply with the provisions of this article and such reasonable rules and regulations.

The structural barriers compliance board shall have the authority to except buildings, sidewalks, curbs and facilities from the provisions of this article and such reasonable rules and regulations, in whole or in part, if, in its opinion, compliance therewith would create a financial hardship, be impractical or serve no benefit.

(b) All such reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) No rule or regulation promulgated hereunder shall require the construction of elevators in buildings or facilities not constructed in whole or in part by the use of state, county or municipal funds or the funds of any other political subdivision of this state when such buildings or facilities are less than three stories in height.
§18-10F-4. State structural barriers compliance board created; membership; expenses.

There is hereby created the state structural barriers compliance board which shall consist of five voting members appointed by the governor, upon the recommendation of the state board of vocational education. This structural barriers compliance board shall consist of one member who shall have severely limited mobility, one member who shall be a professional human services worker, one member who shall be a professional architect or engineer, one member who shall have experience in the building industry and one who shall be from the general public. The director of the division of vocational rehabilitation shall serve as an ex officio member of the board. The members shall serve for a term of three years except of those initially appointed, one shall be appointed for a term of one year, two for a term of two years and two for a term of three years. A vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term. The members of the board shall receive no compensation for their services on such board, but they shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board. The board shall meet at least four times per year, and with such additional meetings as needed. The board shall elect a chairperson from among its members, to serve for one year, who may call special meetings when needed.

§18-10F-5. Duties of state structural barriers compliance board.

The state structural barriers compliance board shall promulgate reasonable rules and regulations; hear appeals by persons affected by this article with regard to compliance requirements and hear complaints by disabled persons who are to be provided access to public buildings by the article, with such hearings to take place within a reasonable time and as soon as practicable. The board shall keep statistics on the number of plans reviewed and violations found by the state fire marshal, the number of variances allowed by the board and the number and disposition of complaints by disabled persons. A report on
§18-10F-6. Enforcement of article; early enforcement by state fire marshal.

It is the duty of any owner to comply with the provisions of this article and all rules and regulations. For the purposes of this section "owner" means any individual, corporation, partnership, trustee, association or other entity that owns, leases or has possession and control of the public use building, or who will own, lease or take possession and control of such building or facility upon its completion, and includes the state, any county, municipality or other subdivision or department thereof. A set of final plans shall be certified by a registered architect or registered professional engineer practicing within the confines of their respective registration laws, and such owners shall notify the fire marshal of such certification, or shall submit to the fire marshal or to a fire prevention bureau or a building department, approved by the fire marshal, a set of final plans for review and approval prior to construction, to assure compliance with the provisions of this article and with any and all reasonable rules and regulations promulgated hereunder.

In order to achieve early compliance, the state fire marshal shall review, approve and certify final plans as being in compliance with and based upon the American National Standards Institute's specifications, as required in section three of this article, even before appointment of board members or promulgation of any rules and regulations, and in the absence of any such prior certification on such basis as authorized in this section by a registered architect or registered professional engineer. Whenever the state fire marshal ascertains that a building or facility or the way of travel to and from the same is about to be constructed, with such construction to begin after the effective date of this article creating the new state structural barriers compliance board, which construction is in violation of the provisions of this article or any such reasonable rules and regulations, he or she shall take measures to correct the deficiency. To enforce these rules and regulations, the state fire marshal may petition the circuit court of the county where the construction is
involved for an order to compel compliance. The person who must comply with the provisions of this article may petition the state structural barriers compliance board for a variance in specific cases where compliance would be an extraordinary financial burden or would otherwise be unreasonable.

§18-10F-7. Board subject to sunset as governmental entity, after performance audit conducted.

The state structural barriers compliance board shall be subject to termination and sunset, after conduct of performance audit thereon, pursuant to the provisions of article ten, chapter four of this code, six years after the effective date of the creation thereof, together with allowance for subsequent periods applicable to the winding up of the affairs of such board.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ...................this the .............

day of ...................... 1987.

Governor