

No: 225

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 225

(By Senators Ash AND Shupe)



PASSED February 26, 1987

In Effect July 1, 1987 Passage



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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

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.

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

11 (1) Use of buildings, sidewalks, curbs and facilities by
12 persons confined to wheelchairs, persons using crutches or
13 other walking aids, persons afflicted by sight or hearing
14 loss, persons disabled by age and any other persons whose
15 mobility is limited;

16 (2) Frequency of use by physically disabled persons as
17 above enumerated;

18 (3) Requirements of the state fire code for the safety of
19 the mobility impaired; and

20 (4) Additional construction cost required to comply
21 with the provisions of this article and such reasonable rules
22 and regulations.

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

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

32 (c) No rule or regulation promulgated hereunder shall
33 require the construction of elevators in buildings or
34 facilities not constructed in whole or in part by the use of
35 state, county or municipal funds or the funds of any other
36 political subdivision of this state when such buildings or
37 facilities are less than three stories in height.

§18-10F-4. State structural barriers compliance board created; membership; expenses.

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

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

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

12 the activities of the board, including these statistics, shall
13 be made to the governor annually.

**§18-10F-6. Enforcement of article; early enforcement by state
fire marshal.**

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

20 In order to achieve early compliance, the state fire
21 marshal shall review, approve and certify final plans as
22 being in compliance with and based upon the American
23 National Standards Institute's specifications, as required
24 in section three of this article, even before appointment of
25 board members or promulgation of any rules and
26 regulations, and in the absence of any such prior
27 certification on such basis as authorized in this section by a
28 registered architect or registered professional engineer.
29 Whenever the state fire marshal ascertains that a building
30 or facility or the way of travel to and from the same is about
31 to be constructed, with such construction to begin after the
32 effective date of this article creating the new state
33 structural barriers compliance board, which construction is
34 in violation of the provisions of this article or any such
35 reasonable rules and regulations, he or she shall take
36 measures to correct the deficiency. To enforce these rules
37 and regulations, the state fire marshal may petition the
38 circuit court of the county where the construction is

39 involved for an order to compel compliance. The person
40 who must comply with the provisions of this article may
41 petition the state structural barriers compliance board for a
42 variance in specific cases where compliance would be an
43 extraordinary financial burden or would otherwise be
44 unreasonable.

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

1 The state structural barriers compliance board shall be
2 subject to termination and sunset, after conduct of
3 performance audit thereon, pursuant to the provisions of
4 article ten, chapter four of this code, six years after the
5 effective date of the creation thereof, together with
6 allowance for subsequent periods applicable to the winding
7 up of the affairs of such board.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

Bernard V. Kelly

Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Judd C. Nichols

Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Ann T. Tomlin
President of the Senate

W. J. ...
Speaker House of Delegates

The within *approved* this the *7th* day of *March*, 1987.

And A. ...
Governor



PRESENTED TO THE
GOVERNOR

Date 3/2/87

Time 1:26 p.m.

RECEIVED

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OFFICE OF THE
SECRETARY OF DEFENSE