

MEMORANDUM

TO: Commissioner Richardson
Florida Building Commission

FROM: Suzanne H. Schmith
Staff Attorney

DATE: March 15, 1999

RE: Accessibility Standards for Children

This memorandum is in response to your request that I research the issue of other state's authority to adopt the accessibility guidelines for children developed by the federal Access Board. You specifically requested that I address the authority of Massachusetts and Texas, which have adopted children's accessibility standards, compared with that of Florida.

As you aware, Florida law adopts and incorporates by reference the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) as the minimum standards for accessibility in the state. *See* s. 553.503, F.S. Therefore, amendments to the ADAAG may be incorporated into the Florida code by rule amendment without legislative action. Florida law further adopts exceptions to the ADAAG which are more stringent than the federal requirements. *See* s. 553.504, F.S. As these exceptions are established by statute, statutory amendment is the only method by which to amend the Florida code in order to incorporate standards which are not included in the ADAAG. The children's accessibility standards have been developed by the federal Access Board, but have not yet been adopted into the ADAAG. Therefore, the Florida Code may only be amended to incorporate those standards if either they are included within the ADAAG or adopted into the Florida Statutes by the legislature.

The laws of Texas and Massachusetts grant broader authority to the state entity charged with adoption of accessibility requirements. Article 9102 of the Texas Civil Statutes is known as the Architectural Barriers Act and authorizes the Commissioner of the Texas Department of Licensing and Regulation to adopt and enforce the state's accessibility standards and specifications. The statute limits the Texas Accessibility Standards only by requiring that they be consistent *in effect* to those adopted by the American National Standards Institute (ANSI). While the Texas Accessibility Standards generally track the ADAAG requirements, they contain more stringent items, including children's accessibility requirements.

Section 13A, chapter 22 of the General Laws of Massachusetts establishes the state Architectural Access Board, and provides a very broad grant of authority to the board to "make and from time to time alter, amend, and repeal . . . rules and regulations designed to make public buildings accessible to, functional for, and safe for use by physically handicapped persons." The Massachusetts law predates the federal ADA and is not constrained by the provisions of the ADA or the ADAAG. The Massachusetts code contains accessibility standards for children throughout many sections.

I hope this information is helpful to you in considering changes to the Florida code and in developing and implementing the Florida Building Code. Please contact me if you have further questions.