

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: Governor's Commission on Disabilities

RULE IDENTIFIER: Chapter F

REGULATION TITLE: Accessibility of State and State Funded Programs and Activities

RULEMAKING ACTION: Direct Final

Direct Final: If no formal objection is received on or before **April 27, 2018** the Governor's Commission on Disabilities will file the adoption without opportunity for public comment.

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date 03/27/2018 and End of comment period 04/27/2018.

SUMMARY OF PROPOSED RULE: This regulation is being repealed and replaced by 525-RICR-10-00-02 Inclusion in State Government Employment, Programs and Activities as part of consolidation and codification of Commission regulations regarding the coordination of state government compliance with state and federal disability rights laws and regulations.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **April 27, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049

Email Address: bob.cooper@gcd.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049

FOR FURTHER INFORMATION CONTACT:

ATTN: Bob Cooper, Executive Secretary Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049
(401) 462-0100 or bob.cooper@gcd.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

The fiscal impact to both the state and city or town is based on the 2010 US Department of Justice: Disability Rights Section of the Civil Rights Division's Final Regulatory Impact Analysis of the Final Revised Regulations Implementing Titles II and III of the ADA, including Revised ADA Standards for Accessible Design Final Report.

The Final RIA also acknowledges that the final rules will undoubtedly confer substantial and important benefits that cannot be readily quantified or monetized. In this sense, the

regulatory assessment must be considered conservative since it almost certainly understates the overall value of the final rules to society. Few would doubt, for example, that the psychological and social impacts of the ability of persons with disabilities to fully participate in public and commercial activities without fear of discrimination, embarrassment, segregation, or unequal access have significant value. Society generally will also experience benefits from the final rules that are difficult to monetize, including: reduced administrative costs (from harmonization of the final rules with model codes); increased worker productivity (due to greater workplace accessibility); improved convenience for persons without disabilities (such as larger bathroom stalls used by parents with small children); and, heightened option and existence values. In addition to unquantifiable benefits, there may be negative consequences and costs as well, such as costs if an entity defers or foregoes alterations, potential loss of productive space during additional required modifications to an existing facility, or possible reduction in facility value and losses to some individuals without disabilities due to the new accessibility requirements.

Small Businesses must comply with this regulation. Any person or entity doing business in the state, any person or entity regulated, by the state or having received financial assistance from the state, or under any program or activity conducted by the state, its agents or any entity doing business with the state. RI Gen. Laws § 42-87-2. Discrimination prohibited.

Authority for This Rulemaking: R.I. Gen. Laws § 42-51-6(3) Governor's Commission on Disabilities - Duties.

Regulatory Findings:

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:

The Governor's Commission on Disabilities proposes to repeal Chapter F:



RHODE ISLAND AND PROVIDENCE PLANTATIONS
Executive Department
**GOVERNOR'S COMMISSION ON
DISABILITIES**

John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049

[voice] (401) 462-0102 [tty] via RI Relay 711 [fax] 462-0106
[e-mail] bcooper@gcd.ri.gov [website] www.disabilities.ri.gov

RULES AND REGULATIONS PERTAINING TO

Chapter F Accessibility of State and State Funded Programs and Activities

Rule proposed on August 25, 1992
Public Hearing on September 21, 1992
Adopted on September 26, 1992
Effective on October 15, 1992
Amendment proposed on November 15, 1996
Public Hearing on December 16, 1996
Adopted Amendment on December 16, 1996
Effective on January 15, 1997
Technical Revision on October 10, 1997
Advertised October 21, 1999
Public Hearing November 22, 1999
Adopted on December 13, 1999
Effective on January 20, 2000
Technical Amendments Adopted on September 13, 2003
Technical Amendments proposed August 11, 2009
Adopted on September 21, 2009
Effective on October 2, 2009

TO BE REPEALED

Compilers Notes:

Red or Blue text indicates a link to an endnote or web link, move **b** to colored text and click to open.
All forms references are available on line at www.disabilities.ri.gov

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I. STATUTORY AUTHORITY

RI GL 42-51-6(3) Governor's Commission on Disabilities – Duties¹, RI GL 37-8-15 Public Buildings Access for People with Disabilities² and RI GL 37-8-15.1 Public Buildings – Accessibility of leased or rented facilities for people with disabilities³.

II. DEFINITIONS

As used in these regulations:

A. "Accessibility for People with Disabilities Standard" means: the provisions of the RI State Building Code⁴ and the applicable federal accessibility code(s)⁵.

B. "Environmental and communication barriers" means: architectural barriers in facilities and grounds, on roadways, sidewalks and pedestrian crosswalks, and work sites [including equipment]; and communication barriers on video text displays, television programs, telephone and other tele-communications mediums, public address systems, and computers.

C. The terms "Governmental entity", "Public agency", and "State" are defined in RI General Law 37-2-7⁶.

D. "The Commission" shall mean the [Governor's Commission on Disabilities](#)⁷.

E. "State building, public building, state facility or public facility" means any:

1. Permanent structure together with all grounds and appurtenant [accessory or adjunct] structures which are intended to act as offices, laboratories, workshops, courtrooms, hearing or meeting rooms, storage, or other space for carrying on the functions of a state agency;
2. Auditoriums, meeting rooms, classrooms, or other educational facilities;
3. Eating, sleeping, medical, dental, or other health care related facilities;
4. Libraries, museum space for use by the general public or a facility used to house conventions, trade shows, exhibitions, displays, meetings, banquets, and other events as well as facilities related thereto;
5. Beaches, forests, management areas, campgrounds, scenic overlooks, nature trails, bathhouses, pavilions, playgrounds, fishponds, fish hatcheries, wildlife preserves, blinds, rest areas, picnic grounds, portages, docks, boat ramps, amusement rides, service facilities at state parks and beaches or other recreation facilities;
6. Public highways, bridges, and highway rest areas; warehouses, and maintenance and repair facilities;
7. This definition does not include sewers or buildings that are intended solely as storage.

F. "State agency"⁸ is defined in RI General Law 42-51-9(3).

G. "Program or activity"⁹ is defined in 29 U.S.C. Chapter 16 Sec. 794

Nondiscrimination under Federal grants and programs.

H. "Public entity"¹⁰ is defined in 42 U.S.C. Chapter 126 Sec. 12131 Americans with Disabilities Act of 1990 and shall include the operators of state funded programs or activities.

I. “Project Manager” shall mean either the Commission or the state agency the Commission designates to oversee an ADA renovation project.

III. PROGRAM ACCESSIBILITY

A. No qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity¹¹.

B. Public entity, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability -(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability¹²--

1. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

2. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

3. Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

4. Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

5. Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s program;

6. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

7. Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

C. Compliance Reports

1. State agencies and operators of state funded programs or activities shall submit an updated listing of facilities they utilize for open meetings, services, programs, or activities to the Commission on the RI Program Accessibility for Persons with Disabilities Survey GCD Form F 1 every fourth (4th) year.

2. The Commission’s Accessibility Committee will review the survey results and develop an action plan to relocate public events from inaccessible facilities or renovate those facilities, within sixty business days of receipt.

IV. SITE SELECTION CRITERIA

A. A public entity may not, in determining the site or location of a facility, make selections

1. That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

2. That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities¹³.

3. All public entities shall include accessibility of the facility into their site selection criteria, when considering the relocation of programs, services or activities or the initial siting of programs, services or activities.

4. Public entities shall not relocate or initially locate services in facilities that do not comply with the federal / state accessibility standards.

5. All public entities shall notify the Commission prior to the determination of final site selections, to arrange for the accessibility survey. The Commission shall conduct an accessibility survey of potential locations of services or activities to ensure compliance with the federal/state accessibility standard.

B. All public entities shall conduct a self-evaluation of current locations of each program, activity or service to determine whether any exclude an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity.

1. Public entities shall relocate each program, service or activity that is not accessible in at least one location in its service region, to an accessible facility.

2. Programs, services or activities that are located in state owned facilities that are not accessible shall submit to the Commission a RI Program Accessibility for Persons with Disabilities Survey Form.

V. EXISTING FACILITIES

A. A public entity shall operate each service, program or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities¹⁴.

B. State ADA/504 Transition Plan – RI Capital Budget Request for Accessibility

1. In the event that structural changes in facilities are undertaken to comply with the obligations established under V. A. to achieve program accessibility, the Commission's Accessibility Committee shall:

a) Develop and periodically revise the state's ADA/504 Transition Plan for the removal of environmental and communication barriers¹⁵; and

b) Submit the RI Capital Budget Request for Accessibility to the Capital Development Committee annually.

2. The RI Department of Transportation, and any other state agency that has responsibility or authority over streets, roads, or walkways, shall submit, for to the Governor's Commission on Disabilities for inclusion in the State's ADA/504 Transition Plan. a schedule for providing curb ramps or other sloped areas where pedestrian cross curbs, giving priority to walkways serving entities covered by the Americans with Disabilities Act, including state and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas¹⁶.

3. The transition plan shall, at a minimum –

- a) Identify physical obstacles in the State of Rhode Island's facilities, that limit the accessibility of its program or activities to individuals with disabilities;
- b) Describe in detail the methods that will be used to make the facilities accessible;
- c) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan goes beyond January 26, 1993, identify steps that will be taken during each year of the transition period.¹⁷

4. The Commission's Accessibility Committee periodically reviews the status of program and employment accessibility in state owned facilities. The Accessibility Committee identifies all state owned facilities that do not conform to the accessibility for people with disabilities standard. Then the Accessibility Committee, with input from the state entities occupying the facilities, identifies all programs and employment opportunities that are inaccessible. Comments from organizations representing individuals with disabilities and consumers (individuals with disabilities) of the services offered in those facilities are solicited. The Committee uses the following criteria to determine the priority of renovations.

- a) Group I. Facilities and Systems housing programs providing direct services primarily to people with disabilities and facilities utilized for open meetings and judicial facilities;
- b) Group II. Facilities and Systems housing programs that provide a direct service to the General Public, and
- c) Group III. Facilities and Systems housing administrative and support services that could, if accessible, expand employment opportunities for workers with disabilities.

Within each group, facilities are prioritized using the following criteria:

- (i) Significance of service (would it be frequented more than another);
- (ii) Incidence of use;
- (iii) Unique service;
- (iv) Duplication of services elsewhere;
- (v) Life-sustaining services;
- (vi) Effect on quality of life;
- (vii) Geographic criteria or regionalization; and
- (viii) Service could be rendered by an adjoining office or elsewhere in the facility.

- d) The Committee then considers the potential for operating funds being used to complete renovations (for maintenance or repair of existing access improvements, low cost renovations or equipment with a short life cycle).
- e) The Committee prepares a priority list of renovation projects and submits it to the Governor's Commission on Disabilities.
- f) The Commission then approves or modifies the list and transmits the list to the Governor for implementation as part of the state's capitol development plan.

C. Awarding Projects:

- 1. The Commission's Accessibility Committee annually informs the state agency(ies) occupying the facility(ies) to be renovated of the maximum amount available, the specific facilities or parts of facilities as well as the nature of the renovations approved, the time-period in which the project's funding is available and the options for project management. The Accessibility Committee annually revises the ADA/504 Transition Plan and RI Capital Budget for Accessibility (in June/July). Projects not on-schedule could be deobligated and the remaining fund balance transferred to other agencies that demonstrate the ability to complete projects on time.
- 2. The Accessibility Committee shall issue a ADA Renovation Grant Award letter to the state agency that includes: the specific renovation project number, the award amount (less contingency) by fiscal year(s), the method of payment.

D. Project Management:

- 1. When the accessibility renovations are a component of a larger project, then the state agency managing that larger project will be responsible for the integration of the accessibility renovations into that project.
- 2. When the accessibility renovation project is designed and or constructed "in-house" by the state agency that occupies the facility being renovated, that agency will manage the project.
- 3. For all other projects, the agency that occupies the facility(ies) being renovated shall submit to the Accessibility Project Management Selection GCD Form F 2 indicating whether it or the Commission will manage the project.

E. Development of Bid Solicitation, Scope of Work, and Construction Management:

- 1. The Commission's staff will approve the bid specification, scope of work during design phase and final plan review.
- 2. Special Design/Scope of Work Planning:
 - a) Accessibility renovations to Historic Structures.

A joint committee will be formed whenever a state facility listed on the National Register of Historic Structures needs to be renovated or altered to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with

disabilities, while maintaining and protecting the historic significance of the facility.

The joint committee will include representatives of:

- (i) The Governor's Commission on Disabilities,
 - (ii) The State Building Commission,
 - (iii) The RI Historic Preservation and Heritage Commission and
 - (iv) The state agency(ies) occupying the facility,
- b) Accessibility renovations involving vertical access.

A joint committee will be formed whenever a state facility needs renovations to elevators or the installation of wheelchair lifts to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with disabilities, while maintaining and protecting the safety of employees and the public. The joint committee will include representatives of:

- (i) The Governor's Commission on Disabilities;
 - (ii) The State Building Commission;
 - (iii) The Department of Labor and Training, Division of Occupational Safety's Elevator Inspection Unit; and
 - (iv) The state agency(ies) occupying the facility.
- c) Accessibility renovations involving fire safety elements.

A joint committee will be formed whenever a state facility needs renovations to fire safety elements to ensure accessibility to programs and or employment opportunities. The joint committee will design a plan to provide accessibility to programs and employment opportunities for individuals with disabilities, while maintaining and protecting the safety of employees and the public. The joint committee will include representatives of:

- (i) The Governor's Commission on Disabilities;
- (ii) The State Building Commission;
- (iii) The State Fire Marshal's Office; and
- (iv) The state agency(ies) occupying the facility.

3. Once a design contract has been awarded or an in-house design team appointed, the project manager shall establish monthly project meetings with the architects / designers / construction managers for all their projects. The Commission's staff shall attend these meetings.

4. The Commission's staff must approve all change orders.

5. The Commission's Accessibility Committee must also approve any change orders to the initial scope of work or to increase funding.

6. The project manager shall oversee those contracts, approve payments, and accept the completed projects, within the award amount, or seek prior authorization from the Commission's designated staff person to spend the project's contingency, and the Accessibility Committee for amounts over the project's contingency.

7. The State Building Commissioner shall issue certificates of occupancy and then the Commission shall authorize each project's final payment(s).

F. Project's Fiscal Management:

1. The project manager shall prepare the bid solicitation, review the proposals and award the architectural / engineering contracts and construction contracts, in accordance with the appropriate purchasing procedures;

2. When the Commission is not the project manager, the Commission and the project manager shall agree on the method of payment, in accordance with the appropriate purchasing procedures.

3. The Commission's staff must inspect and certify the project is completed as specified in the ADA Renovation Grant Award letter, before final payment is distributed.

VI. RAISED LETTER/BRAILLE AND ACCESS DIRECTIONAL SIGNAGE

A. The Department of Corrections' Industries shall only provide interior signage, disability parking, and exterior access directional signage that conforms with the federal and state accessibility for people with disabilities standards to state and municipal agencies. State agencies (including quasi-governmental corporations) may purchase interior signage, disability parking and exterior access directional signs from Corrections' Industries. State agencies with the in-house capacity to produce their own signage that conforms to the federal and state accessibility for people with disabilities standards may utilize their in-house service;

B. The Governor's Commission on Disabilities, with the assistance of the Department of Corrections' Industries, shall provide raised letter/Braille signs, disability parking signs and access directional signs to local government and private agencies, employers, and businesses. These signs shall be provided as complementary gifts, for donations that cover the cost of production and handling.

C. The Commission shall arrange for the purchase and installation of the raised letter signs with Braille initially at all state owned or leased facilities. In all facilities owned or leased by the state, building signage that designates permanent rooms and spaces or provide direction to, or information about functional spaces of buildings shall contain both raised letters and Braille. Once the Commission has installed the initial signs, the state agencies occupying the facility will be responsible for the maintenance or replacement.

VII. NEW CONSTRUCTION AND ALTERATION, OR RENOVATION OF STATE AND STATE FUNDED FACILITIES AND/OR PUBLIC BUILDINGS

A. All facilities designed¹⁸, constructed¹⁹, or altered²⁰ by, on behalf of, or for the use of a governmental body, public entity or public agency, must be readily accessible and usable by individuals with disabilities.

1. All newly constructed or altered, streets; roads and highways must contain curb cuts or ramps²¹.
2. A Joint Committee on Accessibility renovations to Historic Structures, described above in V. E. 2 (a), must determine if it is feasible to provide physical access to historic property. When it is not the State Historic Preservation Officer shall certify the specific accessibility for people with disabilities standards that would threaten or destroy the historic significance of the facility²². All non-threatening accessibility standards will be complied with.
 - B. To ensure program and employment access and use by individuals with disabilities is incorporated at the earliest stages into the site plans and building plans:
 1. The Commission's staff shall participate in developing the design of all construction, renovation and alteration projects on behalf of or for the use of a state governmental body or public agency.
 2. The Commission's staff shall be consulted:
 - a) Prior to the initial development of site plans and building plans to ensure that both access to and use of the facilities in the most economic manner possible; and
 - b) Through any and all revisions of the site plan and building plan to actual completion of the project.
 - C. A state agency may apply to the Commission's staff for a waiver of the provisions of this section. The agency must demonstrate that the proposed design, construction, or alternation does not materially affect accessibility to or usability of the facility. The Commission's staff may only issue a waiver if the alteration work is:
 1. Limited solely to electrical, mechanical, or plumbing systems and / or
 2. Does not materially affect accessibility to or usability of the facility under accessibility for people with disabilities standards.
 - D. At the end of twenty (20) business days the waiver is automatically be granted, unless the Commission's staff has:
 - a) Requested further information, or
 - b) Denied the waiver request.
 - E. General renovations or alternations—Whenever a public entity develops plans for the renovation or alternation of the interior layout of a facility (including employee work areas or customer service areas), or expansion of an existing facility, the public entity shall incorporate the removal of all existing environmental and communication barriers to program and employment opportunities throughout that facility, into the funding and construction plans for the facility.
 - F. New Construction—Whenever a public entity develops plans for the new construction of a facility; the renovation or alternation of the interior layout of the facility (including employee work areas or customer service areas); or expansion of an existing facility, the public entity shall submit its design to the State Building Commission for review to ensure compliance with the State Building Code, including the accessibility for people with disabilities standard.

G. State Funded Facility Construction, Renovations, or Alterations. The Commission and the state agency funding construction, renovation, or alterations to non-state entity facilities, shall establish cooperative agreements regarding the monitoring of accessibility compliance during the development of site plans and building plans through the actual completion of the project(s).”

VIII. ACCESSIBILITY TO OPEN MEETINGS

A. All state agencies shall comply with the provisions of RIGL 42-46-13. “Open Meetings - Accessibility for People with Disabilities” and RI GCD Procedural Regulation Chapter A. Open Meeting - Accessibility for People with Disabilities.

B. The Governor’s Commission on Disabilities shall maintain a list of meeting sites that conform to the Open Meeting Accessibility for People with Disabilities Standard. The Governor’s Commission on Disabilities shall survey sites not on that list, which state agencies wish to use, and advise the state agency of how to bring the facility into compliance with the code on either a temporary or permanent basis.

IX. FORMS

The Commission’s staff shall prepare and revise the forms referenced above, as necessary.

X. ENDNOTES

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

¹ **RIGL 42-51-6. Governor’s Commission on Disabilities – Duties.**

It shall be the duty of the commission to work in cooperation with the National Council on Disability and other interested federal, state, and local agencies, organizations, and employers in:...

(3) Coordinating compliance with federal and state laws protecting the rights of individuals with disabilities by state agencies;

RIGL 42-51-9(4) Governor’s Commission on Disabilities – Definitions.

(4) "Coordinating compliance" means the authority to:

(i) Issue guidelines, directives, or instructions that are necessary to effectuate compliance with federal and state laws protecting the rights of individuals with disabilities;

(ii) Establish a grievance procedure to promptly and equitably resolve complaints of noncompliance with federal and state laws protecting the rights of individuals with disabilities involving state agencies, including the power to investigate possible discrimination and eliminate unlawful practices by informal methods of conference, conciliation, and persuasion;

(iii) Initiate complaints against any state agency that willfully fails to comply with federal and state laws protecting the rights of individuals with disabilities to the appropriate state or federal agency; and

(iv) Develop, make periodic revisions to, and oversee the implementation of a transition plan for the removal of environmental and communication barriers in state-owned facilities.

² **RIGL 37-8-15. Access for people with disabilities.**

The design of all public buildings to be constructed, leased, or rented by the state or any municipality of the state must be in compliance with all the standards promulgated by the Rhode Island State Building Code, chapter 27.3 of title 23, which make buildings and facilities accessible to and usable by people with disabilities.

³ **RIGL 37-8-15.1. Accessibility of leased or rented facilities for people with disabilities.**

(a) No governmental body or public agency, as defined in § 37-2-7, acting as lessee, shall lease or rent facilities that are not accessible to and usable by individuals with disabilities. The lessee governmental body or public agency shall provide the

state building commissioner with a list of prospective facilities to be leased and shall ensure that accessibility certifications in subdivision (a)(1), (a)(2), or (a)(3) and (a)(4) of this section are completed prior to submission of the lease or renewal of the lease for final approval by the state properties commission or other authorized body. Prior to a governmental body or public agency leasing or renting any facility, or renewing a lease:

- (1) The state building commissioner shall certify that the new facility to be leased or rented conforms to the accessibility for people with disabilities provisions of the state building code; or that the existing facility to be leased or rented meets the accessibility requirements of the state building code in effect at the time of first occupancy after January 1, 1978; or if constructed prior to January 1, 1978, meets the requirements of the current state building code; or
 - (2) The state building commissioner shall certify that construction documents for the proposed facility to be leased or rented conform to the accessibility requirements of the state building code, and the accessibility renovations shall be completed within six (6) months of the signing of the lease; or
 - (3) The state building code board of appeals grants a waiver from some provisions of the state building code's accessibility requirements for people with disabilities provisions with respect to state agency leasing the facility; and
 - (4) The governor's commission on disabilities shall certify that the lessee agency's program accessibility plan ensures access to, and use of the facility to be leased or rented for people with disabilities.
- (b) The governor's commission on disabilities shall only certify an accessibility plan that:
- (1) Would not operationally serve to deny any individual with a disability access to a service or program operated by the governmental body or public agency;
 - (2) Would not operationally serve to deny an employee with a disability or job applicant with a disability employment or advancement in that governmental body or public agency;
- (c) The state building code board of appeals shall only grant waivers when total compliance with the disability accessibility provisions of the state building code was structurally infeasible.
- (d) The state building commissioner shall reinspect all facilities leased or rented under subdivision (a)(2) or (a)(3) prior to the date(s) established in the certification or waiver for completion of any renovations required. If the state building commissioner is unable to issue a certification of compliance with the accessibility for people with disabilities provisions of the building code or the variance, then the commissioner shall inform the director of the department of administration that the facility is in noncompliance. The governor's commission on disabilities shall have the right to periodically review the implementation of the accessibility plan, and inform the director of the department of administration of any noncompliance. Upon submission of said notification of noncompliance, the director of the department of administration shall take steps to ensure compliance or forward a report to the attorney general for legal action to terminate the lease.

⁴ **RIGL 23-27.3 State Building Code SBC 17 and/or ICC/ANSI A117.1-2003**

⁵ Uniform Federal Accessibility Standard, Americans with Disabilities Act Accessibility Guideline, or the Fair Housing Accessibility Standard.

⁶ **RIGL 37-2-7 State Purchases - Definitions.**

- (11) "State governmental entity" means any entity created as a legislative body or a public or state agency by the general assembly or constitution of this state, except for municipal, regional, or county governmental entities.
- (16) "Public agency" shall mean the Rhode Island industrial recreational building authority, the Rhode Island economic development corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the Howard development corporation, the water resources board corporate, the Rhode Island health and education building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality management district commission, Rhode Island telecommunications authority, the convention center authority, Channel 36 foundation, the Rhode Island lottery commission, their successors and assigns, and any other body corporate and politic which has been or will be created or established within this state excepting cities and towns and the board of governors for higher education for all purchases which are funded by restricted, sponsored or auxiliary monies .
- (22) "State" shall mean the state of Rhode Island and any of its departments or agencies and public agencies.
- (28) "State agency" means any department, commission, council, board, bureau, committee, institution, or other governmental entity of the executive or judicial branch of this state not otherwise established as a body corporate and politic, and includes, without limitation, the board of governors for higher education except for purchases which are funded by restricted, sponsored, or auxiliary moneys and the board of regents for elementary and secondary education.
- (29) "Governmental entity" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, or government corporation of the executive, legislative, or judicial branches of state, federal, and/or local governments.

⁷ **Governor's Commission on Disabilities**

John O. Pastore Center - 41 Cherry Dale Court

⁸ **RIGL 42-51-9(3) Governor's Commission on Disabilities – Definitions.**

(3) "State agency" means any department, division, agency, commission, board, office, bureau, council, or authority, either branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

⁹ 29 USC 794 "program or activity" means all of the operations of—

- (1)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- (B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or
- (B) A local educational agency (as defined in Sec. 8801 of title 20), system of vocational education, or other school system;
- (3)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—
 - (i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

¹⁰ 42 USC 126 sec. 12131 Definitions (1)"public entity" means--

- (A) Any State or local government;
- (B) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C) The National Railroad Passenger Corporation, and any commuter authority (as defined in Sec. 103(8) of the Rail Passenger Service Act [45 U.S.C. 502(8)]).

¹¹ 28 CFR 35.149

¹² 28 CFR 35.130 (b)(1)

¹³ 28 CFR 35.130 (b)(4)

¹⁴ 28 CFR 35.150 (a)

¹⁵ 28 CFR 35.150 (d)(1) and RIGL 42-51-6 (3)

¹⁶ 28 CFR 35.150 (d) (2) and RIGL 42-51-6 (3)

¹⁷ 28 CFR 35.150 (d) (3)

¹⁸ 28 CFR 35.151 (c) The standard for design, construction or alternation of facilities shall be The Uniform Federal Accessibility Standard (UFAS) or the Americans with Disabilities Act Accessibility Standard (ADAAG).

¹⁹ 28 CFR 35.151 (a) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.

²⁰ 28 CFR 35.151 (b) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

²¹ 28 CFR 35.151 (e) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

²² 28 CFR 35.151 (d) Alterations to historic properties shall comply, to the maximum extent feasible with the section 4.1.7 of UFAS or ADAAG. If it is not feasible to provide physical access to historic property in a manner that will not threaten or destroy the historic significance of the facility, alternative methods of access shall be provided.