

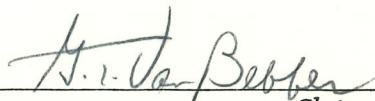
MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Held in Room 510-S, at the Statehouse at 2:45 ~~xx~~ a.m./p.m., on February 24, 1975.

All members were present ~~except~~:

The next meeting of the Committee will be held at 2:45 ~~xx~~ a.m./p.m., on February 25, 1975.

These minutes of the meeting held on February 20, 1975 were considered, ~~corrected~~ and approved.



Chairman

The conferees appearing before the Committee were:

Rep. Bill Morris
Mr. Dean Settle, Wichita, Executive Director of the Kansas Health
Rep. Donn Everett Training Center

The meeting was called to order by the Chairman who stated that HB 2425 involves some amendments to the law concerning building requirements, and asked Mr. Morris, one of the sponsors, to discuss the bill. Mr. Morris explained that this bill puts a penalty section into the existing law; that the law says where public funds are spent on public buildings there shall be no architectural barriers to prevent handicapped persons from entering, but that there is no penalty section.

Mr. Morris introduced Mr. Dean Settle, who in turn introduced Mr. Bob Smith from Hays and Mr. and Mrs. Charles Schroeder from Garden City, who support this legislation. Mr. Settle stated that he actually was representing the Health Training Center for the retarded, and also the Sedgwick County Committee on architectural barriers. He explained that they have made a lot of progress in Wichita toward making all buildings accessible to the handicapped, and mentioned the library, the airport and Century II which had high curbs, making it impossible for someone in a wheelchair to enter.

He mentioned in particular, schools with steps and no elevators, no parking available, restroom facilities with stalls so narrow as to make wheelchair entry impossible; and public buildings with high water fountains, heavy doors, telephones high on the wall, etc. He urged favorable action on the proposal.

Mr. Anderson inquired if these problems couldn't be taken care of in the Civil Rights Commission, and Mr. Morris explained that this is not within their scope. Mr. Hayes expressed concern about the party who is the contractor and merely following the plans of the architect, prepared at the direction of a Board or Commission. Mr. Morris explained that the Revisor told them that they could make one of three choices in how this was handled, and it was merely a choice.

The Chairman stated this seems quite broad because of the words "or causes to be constructed", and wondered if members of the Legislature voting for the new Supreme Court building would be guilty of a misdemeanor in case of a barrier in the construction.

Mr. Settle left a model law which students from George Washington University had put together, and suggested members might find suggestions in that law helpful. See exhibit.

Representative Donn Everett appeared to discuss his HB 2468, which would establish a Commission to make an annual study of Kansas resources and make recommendations to the Legislature. He explained this was drafted along the lines of the Minnesota law; that it is prompted by his concern that Kansas resources should be preserved. He expressed particular concern about water consumption, minerals, labor resources, and all things which give dimension of the State of Kansas. He stated that he believes these things are being neglected, to the detriment of the state. He displayed a document which had been prepared along some of these lines, with certain recommendations. Mr. R. Miller inquired why there should be duplication of studies and costs if these recommendations have already been made, and Mr. Everett stated it was necessary to have this done annually, and he felt that more attention would be given to a report from a commission than is given to reports by agencies.

Rep. Hayes reported on HB 2169, which had been previously heard, and distributed copies of a proposed amendment. See exhibit. He explained that it gives power to fire associations to exempt themselves from Workmen's Compensation and once having done so could bring themselves back in by another election.

It was moved by Mr. Ward and seconded by Mr. Cooper that the proposed amendments be adopted. Mr. W. R. McCarter, Kansas State Council of Firefighters, who had previously appeared on the bill asked to make a statement, and explained that they have no objection to the amendment except that it says "any city" and that it had been their intent to include all associations.

The Chairman pointed out that when the bill was drafted it was applicable only to cities. Mr. Tom Slattery, one of the Shawnee delegation, stated that he didn't think it was the intent to exclude anyone. Mr. Morris made a substitute motion that the language be changed as deemed appropriate by the Revisor, to include all associations. Motion was seconded by Mr. Feleciano, which motion was unanimously adopted. It was then moved by Mr. D. Miller and seconded by Mr. Cooper that the bill as amended be reported favorably. Motion carried without dissent.

The Chairman stated that Mr. Buzzi and Mr. Vogel had asked to defer action on the fire safety bill. (HB 2355)

It was moved by Mr. Feleciano and seconded by Mr. D. Miller that the minutes of February 20 be adopted. Motion carried without dissent.

The meeting was adjourned.

INTRODUCTION

This act, the "Uniform Barrier Free Design Act," comes in response to the desire to eliminate architectural barriers to the physically handicapped. In stating the act's purpose, "to insure that all buildings and facilities are accessible to, and functional for, the physically handicapped through the elimination of architectural barriers" (Section 4), the drafters have reflected upon the intention of their legislative clients: Mr. Edmond J. Leonard of the President's Committee on Employment of the Handicapped and Mr. Randy Swisher of the District of Columbia's Public Interest Research Group (D.C. P.I.R.G.). Contributing to the discussion and formulation of this act were Assistant Professor Alan J. Farber of the Columbus School of Law, Catholic University of America, and Mr. Richard Wheeler, Georgetown University law student. Associate Professor Raymond B. Marcin, Professor of Legislative Drafting at Catholic University, gave constructive criticism and helpful advice on early drafts.

After an initial meeting with the clients, the drafters decided to review a representative sample of state legislation concerning the elimination of architectural barriers to the physically handicapped. States included in the sample were: Alabama, Arizona, California, Colorado, Illinois, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, and South Carolina.

Following this review of legislation, the drafters again met with the legislative clients and discussed what was to be included in the act. The clients wanted a strong act, and they spelled out some of the elements that would make it strong: a broad definition of "physically handicapped" to cover the widest range of disabling conditions possible; the inclusion of all buildings and facilities except one- and two-family dwellings; a majority of physically handicapped persons on the Board for Barrier Free Design; and enforcement provisions with a limited waiver clause. As a result of these discussions, the drafters and clients further decided against an act that would include the detailed specifications of a standard within the act's text. Instead, the drafters adopted the American National Standards Institute Specifications, as modified, to provide for amendments to the legislation as the specifications are changed.

It is the drafters' intent that this act may further the elimination of architectural barriers that prevent the physically handicapped from full use and enjoyment of the resources about them.

Robert J. Castagna
John D. Waters

1. An act concerning the accessibility to and use of build-
2. ings and facilities by the physically handicapped through the
3. elimination of architectural barriers, enforced by a Board
4. for Barrier Free Design, and to make uniform the law with
5. reference thereto.

COMMENT

A "comprehensive title" should enable a reader to determine quickly the contents of an act. Therefore, it must be fully descriptive. On the other hand, this description is limited by a primary rule of drafting that an act must contain one subject, and this one subject is to be contained in the title.

The comprehensive title above adheres to the one-subject rule. It states the purpose ("the accessibility to and use of buildings and facilities by the physically handicapped"); the thrust ("through the elimination of architectural barriers"); and the medium for enforcement ("a Board for Barrier Free Design").

The last phrase ("and to make uniform the law with reference thereto") is suggested in the drafting rules for writing uniform acts at page 400 of the Handbook of the National Conference of Commissioners on Uniform State Laws (1975), referred to in comments below as Handbook.

6. Be it enacted by the _____ of the State
7. of _____:
8. SECTION 1. As used in this act:
9. (a) "Physically handicapped" means having a temporary
10. or permanent impairment or condition which causes a
11. person to walk with difficulty or insecurity; affects the
12. sight or hearing to the extent that a person is insecure
13. or exposed to danger; or causes faulty coordination or
14. reduces mobility, flexibility, coordination, or percep-
15. tiveness.

COMMENT

The drafters' intent was to include in the definition of "physically handicapped" not only those with crutches and wheel-chairs, but anyone with a physical difficulty. This means those with sight and hearing disabilities; those with faulty coordination or palsy from brain, spinal, or peripheral nerve injury; and those affected by the process of aging.

The definition is explicit without being enumerative. In other words, it avoids the approach of some legislation of categorizing the handicapped in terms of those with "non-ambulatory disabilities", "semi-ambulatory disabilities", "sight disabilities", "hearing disabilities", "disabilities of incoordination", and "aging". Instead, the definition concentrates on the end results of being handicapped (i.e., it concentrates on "having a ...condition which ...causes ...").

The inclusion of the aged in the definition of physically handicapped is important, not only for purposes of inclusiveness, but for practical, political purposes. In many states the senior citizen lobby is more effective than the physically handicapped lobby. Therefore, the aid of the aged in enacting this legislation is deliberately courted by the drafters.

16. (b) "Buildings and facilities" means all buildings,
17. facilities, and appurtenant grounds, with the exception
18. of one-and two-family dwellings.

COMMENT

This definition is deliberately broad to include all buildings, all facilities pertaining to buildings, and appurtenant grounds, with the exception of one-and two-family dwellings. This exception reflects a consideration of the possible cost burden on an individual family, and in conjunction with the cost burden, the doubtful political feasibility of such a provision. The minimum requirements for buildings and facilities, such as the percentage of barrier free units to be included in a multi-unit residential building, are to be found in the Code for Barrier Free Design.

"Buildings" includes, but is not limited to the structural components of doors, doorways, stairs, floors, ceilings, hallways, and rooms. "Facilities" includes, but is not limited to, such accommodations as bathroom facilities, toilet stalls, dining areas, drinking fountains, and phone booths. "Appurtenant grounds" includes, but is not limited to, sidewalks, curbing, ramps, and entrances giving access and egress to buildings, as well as parking lots.

however, the thrust of the subdivision is not categorical, but inclusive. Thus, it matters not whether an item could be classified under "buildings" or "facilities" or "appurtenant grounds"; it matters only if the item is potentially an architectural barrier.

19. (c) "Architectural barriers" means barriers that
20. deter the physically handicapped from having access to,
21. and free mobility in and around, buildings and facil-
22. ities.

COMMENT

An "architectural barrier" often goes unrecognized by one who is not physically handicapped. The function of the Code for Barrier Free Design (see Section 4(a)) is to enunciate minimum specifications and standards, in order to eliminate as many architectural barriers as possible, and concomitantly to enlighten the general public to the problem involved. Presently, this function is amplified in An Illustrated Handbook of the Handicapped Section of the North Carolina State Building Code (1974), published by the North Carolina Building Code Council and the North Carolina Department of Insurance. The drafters realize that the elimination of architectural barriers is an evolving process, and the input of the physically handicapped to the Code for Barrier Free Design is imperative.

23. SECTION 2. There is hereby created the (state) Board for
24. Barrier Free Design which shall consist of the following
25. eleven members: eight members appointed by the Governor
26. on or before the effective date of this act, and three
27. officio members. At least six of these members shall be
28. physically handicapped persons, at least one of whom the
29. Governor shall appoint from the nominees of groups within
30. the state which are fairly representative of the interests

31. of the physically handicapped. The Governor also shall
32. appoint one member from the nominees of groups within the
33. state which are fairly representative of the interests
34. of the construction industry, and one member who is a li-
35. censed architect. Of the members first appointed, two
36. shall serve for one year each; two for two years each;
37. two for three years each; and two for four years each.
38. Thereafter, the Governor shall appoint members for four
39. year terms. A vacancy shall be filled in the same manner
40. as the original appointment for the balance of the unex-
41. pired term.

42. The board shall have the following three ex officio
43. members or their designees: _____ (the state
44. legislature shall insert these members: one each from the
45. state departments of budget and finance, vocational re-
46. habilitation, and engineering, or their equivalents).

COMMENT

The intent of the above section is to create a Board for Barrier Free Design and to specify the board's composition and the length of members' terms.

The legislative clients desired a strong act. Keeping that in mind, the drafters propose a board of eleven members (eight appointed by the Governor and three ex officio members) with a majority of at least six physically handicapped persons on the board. In order to provide input from the private sector, the section provides for the Governor to select at least one of the physically handicapped members from the nominees of intrastate groups fairly representative of the handicapped, and one member from the nominees of intrastate groups fairly representative of the construction industry. In order to obtain professional architectural input, one member shall be a licensed architect.

The section states "at least six of these members shall be physically handicapped persons" in order to provide a handicapped majority of at least, but not limited to, six members.

of a physically handicapped person from the nominees of the physically handicapped; however, the Governor is free to choose more than one of the nominees to constitute the eight appointed members, particularly if a competent nonhandicapped representative has been nominated.

The ex officio members are chosen from the appropriate state departments corresponding to those mentioned. The drafters considered economics, rehabilitation, and engineering to be those areas immediately concerned with the board's decisions.

47. SECTION 3. The board shall meet as soon as practicable
48. after appointment and elect one of its appointed members
49. as chairperson who shall serve for a term of two years
50. and until a successor is elected. The board shall meet
51. not less than six times annually, and at such other times
52. as may be designated by the chairperson. Six members of
53. the board shall constitute a quorum at all meetings. The
54. board shall be an agency of the State _____ (the state
55. legislature shall insert the department or division under
56. which the board shall operate).

COMMENT

This section gives the board a chairperson for a two year term and requires the board to meet at least six times annually and at the discretion of the chairperson. It sets forth a quorum rule of six members at all meetings.

In discussion with the legislative clients, the drafters explored the alternatives of establishing the board as an independent agency or as one under the authority of an existing state body. For reasons of administrative, budgetary, and personnel resources, the drafters, in consultation with the clients, decided upon the latter.

57. SECTION 4. The board, in furthering the purpose of this
58. act to insure that all buildings and facilities are acces-
59. sible to, and functional for, the physically handicapped

COMMENT

The board "may" is drafting language to indicate that the board "is authorized" to carry out the following functions. The language is not mandatory, as that of Section 4.

- 69. (a) Conduct studies, hold hearings, administer oaths,
- 70. issue subpoenas, publish reports, and recommend legislation
- 71. to implement this act.

COMMENT

The most important authorization granted in Section 5(a) is the ability to administer oaths and issue subpoenas. This enhances the board's ability to engage in fact-finding pursuits, with respect to, but not limited to, holding investigatory hearings, reviewing complaints, or issuing cease-and-desist orders.

- 72. (b) Receive, process, and review complaints from any
- 73. aggrieved person, according to the _____ (insert the
- 74. state's Administrative Procedure Act).

COMMENT

This authorizes the board to be responsive to complaints of noncompliance. The complainant may be any aggrieved person. The procedure for receiving, processing, and reviewing complaints is subsumed under the state's Administrative Procedure Act, which has accepted guidelines for such matters as the powers and duties of the presiding officials, the burden of proof, the submission of evidence, and the compilation of a record.

- 75. (c) Issue cease-and-desist orders, enforceable in court
- 76. according to the _____ (insert the state's Administra-
- 77. tive Procedure Act), that enjoin an owner, an owner's agent,
- 78. or a lessee-in-possession from further construction or
- 79. use of buildings and facilities, until compliance with the

80. Code for Barrier Free Design. Any person who violates
81. any order of the court shall be fined, from the effective
82. date of the order, not less than \$100.00 nor more than
83. \$500.00 for each day's continued noncompliance. This fine
84. shall be in addition to any other penalties imposed by the
85. court.

COMMENT

Section 5(c) contains the most effective tool at the disposal of the board: the cease-and-desist order. This subdivision enables the board to obtain a judicial enforcement of an order enjoining further construction or use of buildings and facilities until compliance with the Code for Barrier Free Design. The cease-and-desist orders are directed to either an owner, an owner's agent, or a lessee-in-possession, in order to be effective in instances of sham ownerships, corporate ownerships, and absentee landlords.

In order to uphold this subdivision's effectiveness as a tool to eliminate architectural barriers, Section 5(c) includes a sanction provision, which the court must apply to violations of its orders. It is the result of the drafters' sensitivity to the need for a strong sanction in addition to any other penalties the court might impose for violating an order. The sanction is one for repeated offenses (i.e., for each day's noncompliance). The sanction is operative as of the effective date of the court's order. Thus, the court does have some discretion to grant a "grace period" for compliance with the Code for Barrier Free Design.

86. (d) Grant exemptions that are annually renewable only
87. if, on a clear and convincing showing, a compelling public
88. interest outweighs the state's interest in removing archi-
89. tectural barriers. No exemptions may be granted in the
90. case of buildings and facilities that are constructed,
91. purchased, leased, or rented in whole or in part by the
92. use of state funds or the funds of any political subdivision

94. as these may be defined and determined in good faith by

95. the board.

COMMENT

Exemptions are to be of one year's duration. They may be renewed annually, but it is the drafters' intent that continued renewals are not to be viewed favorably by the board.

Exemptions are to be utilized only in unique situations. This uniqueness is determined by a severe balancing test, that "only ... on a clear and convincing showing, a compelling public interest outweighs the state's interest in removing architectural barriers." As noted by the drafters, some historical monuments meet the severe balancing test (i.e., that relics of the past, which can in no way be renovated to exclude architectural barriers, need not be enjoined from use by nonhandicapped sightseers and historians). To avoid abusing the inclusion of "exceptions" under this category, such exceptions are to be defined and determined by the board.

With the exception of certain historical monuments, the state has a heavy burden to comply with this act.

96. SECTION 6. Failure to comply with any provision of this
97. act or any regulation issued thereunder shall be punishable
98. by a fine of not less than \$100.00 nor more than \$1,000.00,
99. or by imprisonment for not more than thirty days, or both.

COMMENT

This provision establishes noncompliance with the act as a criminal offense. It is a familiar provision to drafters engaged in legislation involving the creation of boards, as in the instant case. It is also familiar to drafters that such a provision is not often utilized by courts. For this reason, the drafters created a strong sanction in Section 5(c).

100. SECTION 7. The international symbol of access to the physi-
101. cally handicapped shall be permanently displayed at the entrance

102. of buildings and facilities that are in compliance with
103. the Code for Barrier Free Design. The international symbol
104. of access is:



COMMENT

Through the display of "the international symbol of access," the drafters intend to notify the physically handicapped that buildings and facilities are free from architectural barriers according to the Code for Barrier Free Design.

With the possibility of exemptions granted under the act, this section will inform the physically handicapped, at a glance, which buildings and facilities do or do not comply with the code.

105. SECTION 8. This act shall be so applied and construed
106. as to effectuate its general purpose to make uniform the
107. law with respect to the subject of this act among those
108. states which enact it.

COMMENT

The inclusion of this "uniformity of application and construction" section is suggested by Handbook, 400.

109. SECTION 9. This act may be cited as the "Uniform Barrier
110. Free Design Act."

COMMENT

The inclusion of this "short title" section is suggested by Handbook, 400, 401.

111. SECTION 10. If any provision of this act or the applica-
112. tion thereof to any person or circumstance is held invalid,
113. the invalidity does not affect other provisions or applica-
114. tions of the act which can be given effect without the invalid
115. provision or application, and to this end the provisions
116. of this act are severable.

COMMENT

The inclusion of this severability clause is suggested
by Handbook, 399, 400.

117. SECTION 11. The following acts and parts of acts are re-
118. pealed: _____ (to be determined by the state legis-
119. lature).

COMMENT

The inclusion of this repeal section is suggested by Hand-
book, 400, 401.

120. SECTION 12. This act shall take effect on _____ (state
121. legislature shall insert either "upon approval by the
122. Governor," or a specified date). After the effective date
123. of this act, no person shall construct or permit the con-
124. struction of buildings and facilities, unless they comply
125. with the Code for Barrier Free Design.

126. Five years after the effective date of this act, except
127. as exempted in Section 5(d), all existing buildings and
128. facilities shall comply with the Code for Barrier Free
129. Design.

COMMENT

The legislature decides when the act shall be effective, the effective date being the time beyond which no construction may commence unless there is compliance with the Code for Barrier Free Design.

This section allows a five year grace period (with exemptions granted under Section 5(d)) for the renovation, in compliance with the code, of all existing buildings and facilities and those under construction on the effective date of the act.

Again, mindful of the clients' desire for a strong act, the drafters determined that the act would be weak if renovation, in compliance with the code, were not required.

Appendix

1. An act concerning the accessibility to and use of build-
2. ings and facilities by the physically handicapped through the
3. elimination of architectural barriers, enforced by a Board
4. for Barrier Free Design, and to make uniform the law with
5. reference thereto.

6. Be it enacted by the _____ of the State
7. of _____:

8. SECTION 1. As used in this act:

9. (a) "Physically handicapped" means having a temporary
10. or permanent impairment or condition which: causes a
11. person to walk with difficulty or insecurity; affects the
12. sight or hearing to the extent that a person is insecure
13. or exposed to danger; or causes faulty coordination or
14. reduces mobility, flexibility, coordination, or percep-
15. tiveness.

16. (b) "Buildings and facilities" means all buildings,
17. facilities, and appurtenant grounds, with the exception
18. of one-and two-family dwellings.

19. (c) "Architectural barriers" means barriers that
20. deter the physically handicapped from having access to,
21. and free mobility in and around, buildings and facil-
22. ities.

23. SECTION 2. There is hereby created the (state) Board for
24. Barrier Free Design which shall consist of the following
25. eleven members: eight members appointed by the Governor
26. on or before the effective date of this act, and three ex

27. officio members. At least six of these members shall be
28. physically handicapped persons, at least one of whom the
29. Governor shall appoint from the nominees of groups within
30. the state which are fairly representative of the interests
31. of the physically handicapped. The Governor also shall
32. appoint one member from the nominees of groups within the
33. state which are fairly representative of the interests
34. of the construction industry, and one member who is a li-
35. censed architect. Of the members first appointed, two
36. shall serve for one year each; two for two years each;
37. two for three years each; and two for four years each.
38. Thereafter, the Governor shall appoint members for four
39. year terms. A vacancy shall be filled in the same manner
40. as the original appointment for the balance of the unex-
41. pired term.

42. The board shall have the following three ex officio
43. members or their designees: _____ (the state
44. legislature shall insert these members: one each from the
45. state departments of budget and finance, vocational re-
46. habilitation, and engineering, or their equivalents).

47. SECTION 3. The board shall meet as soon as practicable
48. after appointment and elect one of its appointed members
49. as chairperson who shall serve for a term of two years
50. and until a successor is elected. The board shall meet
51. not less than six times annually, and at such other times
52. as may be designated by the chairperson. Six members of
53. the board shall constitute a quorum at all meetings. The

54. board shall be an agency of the State _____ (the state
55. legislature shall insert the department or division under
56. which the board shall operate).

57. SECTION 4. The board, in furthering the purpose of this
58. act to insure that all buildings and facilities are acces-
59. sible to, and functional for, the physically handicapped
60. through the elimination of architectural barriers, shall:

61. (a) Establish, publish, and enforce a Code for Barrier
62. Free Design which shall be at least as restrictive as the
63. American National Standards Institute Specifications A 117.
64. 1-1961 (R1971), as modified.

65. (b) Promulgate regulations as may be necessary to enforce
66. the provisions of this act, and the Code for Barrier Free
67. Design.

68. SECTION 5. The board may:

69. (a) Conduct studies, hold hearings, administer oaths,
70. issue subpoenas, publish reports, and recommend legislation
71. to implement this act.

72. (b) Receive, process, and review complaints from any
73. aggrieved person, according to the _____ (insert the
74. state's Administrative Procedure Act).

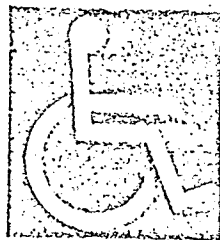
75. (c) Issue cease-and-desist orders, enforceable in court
76. according to the _____ (insert the state's Administra-
77. tive Procedure Act), that enjoin an owner, an owner's agent,
78. or a lessee-in-possession from further construction or
79. use of buildings and facilities, until compliance with the

50. Code for Barrier Free Design. Any person who violates
81. any order of the court shall be fined, from the effective
82. date of the order, not less than \$100.00 nor more than
83. \$500.00 for each day's continued noncompliance. This fine
84. shall be in addition to any other penalties imposed by the
85. court.

86. (d) Grant exemptions that are annually renewable only
87. if, on a clear and convincing showing, a compelling public
88. interest outweighs the state's interest in removing archi-
89. tectural barriers. No exemptions may be granted in the
90. case of buildings and facilities that are constructed,
91. purchased, leased, or rented in whole or in part by the
92. use of state funds or the funds of any political subdivision
93. of the state, with the exception of historical monuments
94. as these may be defined and determined in good faith by
95. the board.

96. SECTION 6. Failure to comply with any provision of this
97. act or any regulation issued thereunder shall be punishable
98. by a fine of not less than \$100.00 nor more than \$1,000.00,
99. or by imprisonment for not more than thirty days, or both.

100. SECTION 7. The international symbol of access to the physi-
101. cally handicapped shall be permanently displayed at the entrance
102. of buildings and facilities that are in compliance with
103. the Code for Barrier Free Design. The international symbol
104. of access is:



105. SECTION 8. This act shall be so applied and construed
106. as to effectuate its general purpose to make uniform the
107. law with respect to the subject of this act among those
108. states which enact it.

109. SECTION 9. This act may be cited as the "Uniform Barrier
110. Free Design Act."

111. SECTION 10. If any provision of this act or the applica-
112. tion thereof to any person or circumstance is held invalid,
113. the invalidity does not affect other provisions or applica-
114. tions of the act which can be given effect without the invalid
115. provision or application, and to this end the provisions
116. of this act are severable.

117. SECTION 11. The following acts and parts of acts are re-
118. pealed: _____ (to be determined by the state legis-
119. lature).

120. SECTION 12. This act shall take effect on _____ (state
121. legislature shall insert either "upon approval by the
122. Governor," or a specified date). After the effective date
123. of this act, no person shall construct or permit the con-
124. struction of buildings and facilities, unless they comply
125. with the Code for Barrier Free Design.

126. Five years after the effective date of this act, except
127. as exempted in Section 5(d), all existing buildings and
128. facilities shall comply with the Code for Barrier Free
129. Design.

60. through the elimination of architectural barriers, shall:

COMMENT

Section 4 is the requirement section of this act, and its mandatory language (i.e., "(t)he board...shall") includes the purpose of the act.

61. (a) Establish, publish, and enforce a Code for Barrier
62. Free Design which shall be at least as restrictive as the
63. American National Standards Institute Specifications A 117.
64. 1-1961 (R1971), as modified.

COMMENT

Subdivision (a) requires the board to "(e)stablish, publish, and enforce a Code for Barrier Free Design...." The drafters contemplate future revisions of the American National Standards Institute Specifications--these revisions to incorporate progressive specifications such as those included in the Handicapped Section of the North Carolina State Building Code. Further developments are occurring at Syracuse University where a Government project is underway that may determine more modern specifications than those now in existence. The drafters, therefore, cognizant of developing specifications and without the technical expertise to propose a complete Code for Barrier Free Design of their own, have set as a minimum standard the American National Standards Institute Specifications, as modified. This subdivision, then, anticipates automatic changes in the legislation as the specifications are altered.

65. (b) Promulgate regulations as may be necessary to enforce
66. the provisions of this act, and the Code for Barrier Free
67. Design.

COMMENT

Subdivision (b) requires the board to put forth regulations when deemed necessary to enforce this act and the Code for Barrier Free Design.