

Approved: February 20, 2006
Date

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 10:40 A.M. on January 24, 2006, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Michael Corrigan, Revisor of Statutes Office
Alan Conroy, Director, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Reagan Cussimano, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Judy Bromich, Chief of Staff
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Julene Miller, Deputy Attorney General, Office of the Attorney General
Kerrie Bacon, Legislative Liaison, Kansas Commission on Disability Concerns
Ray Petty, Chairman, Legislative Committee for the Kansas Commission on Disability Concerns
Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities
Kathy Lobb, Legislative Liaison, Self-Advocate Coalition of Kansas
David P. Calvert, Attorney, Wichita, Kansas

Others attending:

See attached list.

Bill Introductions

Senator Barone moved, with a second by Senator Emler, to introduce a bill concerning calendar day compensation for member of the Senate; relating to absences from senate sessions (5rs1627). Motion carried on a voice vote.

Senator Emler moved, with a second by Senator Morris, to approve the minutes of the meetings of January 9 and January 10, 2006. Motion carried on a voice vote.

Chairman Umbarger opened the public hearing on:

SB 309--Accessibility standards for public buildings, enforcement of act; appointment of an additional assistant attorney general

Staff briefed the committee on the bill (Attachment 1).

The Chairman welcomed the following conferees:

Julene Miller, Deputy Attorney General, testified in support of **SB 309** (Attachment 2). She explained that the Kansas Commission on Disability Concerns communicated to them their desire that the Attorney General have a more pronounced role in enforcing the Kansas Architectural Accessibility Act. Ms. Miller noted that at the Commission's request they assisted in drafting the language to provide the Attorney General the authority, and funding, for a full time attorney position.

Kerri Bacon, Legislative Liaison, Kansas Commission on Disability Concerns, spoke in support of **SB 309** (Attachment 3). Ms. Bacon explained that the Commission urges support of **SB 309**, and specifically, lines 39-41. She mentioned that the requested amendment in lines 40 and 41 of **SB 309** is intended to expand the

CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 10:40 A.M. on January 24, 2006, in Room 123-S of the Capitol.

Attorney General's capacity for investigating, mediating, and filing injunctions for violations of this law. She noted that it also clarifies the legislature's intent that the Attorney General of Kansas should actively enforce this important law.

Ray Petty, Chairman, Legislative Committee, Kansas Commission on Disability Concerns, testified in support of **SB 309** (Attachment 4). Mr. Petty explained that the bill was introduced last year to fix an enforcement problem with the Kansas accessibility standards, a statute that has been on the books for over 25 years. He noted that active promotion of accessibility by the Attorney General will go a long way to see to it that local government entities pay closer attention to the law and that over the next decade continued improvements in access will be seen.

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, spoke in support of **SB 309** (Attachment 5). Ms. Rhys explained that the Council supports the bill because it would increase the ability of the Attorney General's Office to enforce the Kansas accessibility standards.

Kathy Lobb, Legislative Liaison, Self-Advocate Coalition of Kansas (SACK), testified in support of **SB 309** (Attachment 6). Ms. Lobb mentioned that SACK supports full community inclusion for people with disabilities and noted that it is important that public places are accessible for everyone. Ms. Lobb explained that she felt that it was a good idea to have the Attorney General's Office monitor compliance with the Americans with Disabilities Act (ADA).

David P. Calvert, Attorney, Wichita, spoke in opposition to **SB 309** in its present form (Attachment 7). Mr. Calvert suggested to the Committee that a simple amendment to the Kansas Accessibility Act providing for a private cause of action is the preferable solution, unless the Committee is willing to invest \$172,000 of taxpayer money to provide both solutions. In closing, Mr. Calvert noted that he would support amending **SB 309** to allow for a private cause of action.

There being no further conferees to appear before the Committee, the Chairman closed the public hearing on **SB 309**.

Committee questions and discussion followed. Senator Emler explained that what is being talked about is public. It was noted that he disagreed with the proposal to add this to the Attorney General's staff and that the proposed language in Mr. Calvert's testimony "it is a person with a disability or organization of persons with disabilities" should be stricken, and should not be limited to the private attorney. Senator Emler suggested striking the amendment as the committee has it in **SB 309** and to amend it as proposed by Mr. Calvert and strike the statement "if it is a person with a disability or organization of persons with disabilities." The Chairman asked Senator Emler to have a balloon amendment drawn up and mentioned that the Committee will consider the bill at a later date.

The meeting adjourned at 11:50 a.m. The next meeting was scheduled for January 25, 2006.

**SENATE WAYS AND MEANS
GUEST LIST**

Date January 24, 2006

NAME	REPRESENTING
Anthony A. Fackell	AOA - Admin.
Mark Borczyk	Capital Strategies
Estelle Montgomery	Hein Law Firm
Ron Seebler	Hein Law Firm
Jennifer Schwan	KACIL
Jessie Torres	JILCK
Shannon Jones	SILCK
La Marie H. [Signature]	SKIL
Beth Jones	Huttles Govt Relations
Angie Rinkina	SACK
Kathy Lobb	SACK
Kerrie Bacon	KCDC
Martha Gabehart	KCDC
Ann Rhys	KCDD
Ray Petty	Great Plains HOA & IT Center / KCDC
Dulene Miller	AG's Office
Diana Maham	AG's Ofc
Ben Cleaves	DOB
Richard A. Soursiego	Kennedy ASSOC

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

545N-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

February 6, 2006

To: Senate Ways and Means Committee
From: Carolyn Rampey, Principal Analyst
Re: Brief on SB 309

The following information was presented to the Senate Ways and Means Committee on January 24, 2006.

SB 309 would amend a section of the law which deals with accessibility to public buildings. Kansas has had such laws in place for many years and in the 1990s, Kansas law was amended to conform to the Americans With Disabilities Act. The law applies to public buildings and private buildings used by the public, such as motels, movie theaters, and restaurants.

KSA 2004 Supp. 58-1304, which would be amended by SB 309, concerns enforcement of the standards and provides that, in the case of public elementary and secondary schools, the law shall be enforced by the State Board of Education; in the case of state government facilities, the law shall be enforced by the Secretary of Administration; in the case of local government facilities, the law shall be enforced by the local governmental entity involved in building the facility; and in the case of all other buildings, the law shall be enforced by the building inspector or other agency or person designated by the governmental entity in which the facility is located.

Existing law makes the Attorney General responsible for overall enforcement of the act, a duty which the General over the years has performed basically within available resources. SB 309 proposes to strengthen the Attorney General's oversight function by requiring the General to appoint an additional assistant attorney general or contract to use the services of other persons to oversee the enforcement of Kansas' accessibility standards.

Based on the fiscal note prepared by the Division of the Budget, enactment of SB 309 would require hiring a litigation attorney and an architect, at salaries of \$62,500 each. In addition, the Attorney General estimates that litigation expenses would be \$30,000 per year, travel would be \$3,000 per year, supplies and equipment would be \$2,000 per year, and there would be a one-time cost of \$12,000 for furniture and equipment when the new positions are hired. For FY 2007, these costs total \$172,000 from the State General Fund.

CR/sp

**SENATE COMMITTEE ON WAYS AND MEANS
SENATE BILL NO. 309
TUESDAY, JANUARY 24, 2006
PRESENTATION BY
JULENE MILLER
DEPUTY ATTORNEY GENERAL**

Mr. Chairman, members of the Committee. Thank you for allowing me the opportunity to appear before you today in favor of Senate Bill No. 309.

Last year, the Kansas Commission on Disability Concerns communicated to us their desire that the Attorney General have a more pronounced role in enforcing the Kansas Architectural Accessibility Act. At the Commission's request, we assisted in drafting this language to provide the Attorney General the authority, and funding, for a full-time attorney position and such other technical assistance as necessary to conduct more training and mediation and possibly bring actions to enforce the Act.

K.S.A. 58-1304, as currently in effect, places direct responsibility for enforcement of the Act on the state board of education, the secretary of administration and local governmental entities. The Attorney General is given the authority to "oversee" such enforcement.

When this "oversight" role was first implemented in 1991, Attorney General Bob Stephan requested a full time attorney be added to the office to accomplish the task of "ensuring that literally every public building and facility in this state meet appropriate standards." However, no new FTE or funding for this responsibility was granted. In 1992, a .25 attorney position was provided in the budget to fulfill the responsibilities conferred by the 1991 amendment to the Act.

Beginning in 1992, the Attorney General was also able to find money within the office budget to fund a contract with the department of administration, for the services of a full-time architect to assist with educating and training front line enforcement entities (governing bodies of municipalities, building inspectors, etc.). In fiscal year 1997, due to budget cuts, the Attorney General began sharing the architect's time with the department of administration. By fiscal year 2002, the office was unable to renew the contract, even for shared time.

With the quarter-time attorney position and architect contract, we were able to:

- provide education and training to the front line enforcement entities, including a mass mailing to inform entities of their responsibilities under the Act, and provide information regarding the ADAAG and USPAP;
- respond to questions posed by architects and others in the construction industry;
- facilitate resolution of complaints by directing them to the correct front-line enforcement entity;
- participate in a national effort to bring Wendy's restaurants (their queue lines and

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1-24-06
Attachment 2*

Senate Ways and Means
SB 309 Testimony
Office of Attorney General

- counter heights) into compliance with the ADA;
- participate on the Supreme Court's task force for opening the courts;
- assist in bringing several facilities and services into compliance with the Act, including the Cherokee, Wallace, Dickinson and Thomas County courthouses, Dillons store parking lots, Pittsburg State University, Wichita State University, the Cities of Turon, Wellsville, Arkansas City, Goodland, Carbondale, Wichita and Manhattan and Kansas Lottery retailers across the state;
- assist in a satisfactory resolution of the state fair grounds litigation (as one result of this litigation, this office decided to hire a team to conduct an ADA Self Evaluation and Transition Plan for the entire Kansas State Fair even prior to the decision of the 10th Circuit);
- author an amicus brief that was filed with the United States Supreme Court in the case of *Tennessee v. Lane*; and, most recently,
- cooperate with the Secretary of State and the Department of Administration in obtaining funding for a passive entrance to the Memorial Building.

Additionally, we were able to make numerous presentations regarding Title II and Title III requirements, conduct on-site inspections of facilities to assist with compliance and respond to thousands of inquiries in an attempt to educate both the entities required to comply with the Kansas Act and the public in general.

If given another position and funding as anticipated by SB 309, our office would be able to continue and expand upon such activities and bring enforcement actions as necessary. This bill, as introduced, does not alter the substance or procedure of the Act, but merely provides more resources to do the "oversight" function already contained in the Act. However, in order for this new provision to have any effect, the positions created would need to be accompanied by FTE's and funding.

Thank you for your consideration of this amendment.



Kansas Commission on Disability Concerns

Testimony to the Senate Ways & Means Committee
SB 309; concerning accessibility standards for public buildings
or facilities; relating to the enforcement thereof.
January 24, 2006

Chairperson Umbarger and members of the committee, I am Kerrie Bacon, Legislative Liaison for the Kansas Commission on Disability Concerns (KCDC). We are charged with providing information to the Governor, the Legislature, and to State agencies about issues of concern to Kansans with disabilities (K.S.A. 74-6706).

The Kansas Commission on Disability Concerns urges you to support SB 309, specifically the addition of lines 39-41. The concern is that buildings open to the public across Kansas are still too often being built and renovated without complying with the accessibility standards required in the Kansas Accessibility Act. The architectural standard in the Kansas law is aligned with requirements under the Americans with Disabilities Act (ADA), so that local governments are better able to avoid confusion in building public facilities and in permitting construction of places of public accommodation.

This concern about continued non-compliance is validated through:

1. Legal cases brought before the court such as Chaffin et al v. Kansas State Fair (2004) and LINK, Inc. et al v. City of Hays (2000)
2. Concerns brought up at the KCDC legislative open forums and quarterly meetings
3. For the past several years KCDC has received an average of more than 40 phone calls a year about accessibility issues covered by the Kansas Accessibility Act and the ADA.

KCDC believes people with disabilities are equal citizens and equal partners in Kansas society. Access for people with disabilities to newly built or renovated buildings open to the public is required by the Kansas Accessibility Act (K.S.A. 58-1301 – 1309). The ultimate enforcement of the act is with the Attorney General's office. However, insufficient funding has been included in their budget to provide anything more than minimal monitoring, training and education. The requested amendment in lines 40 and 41 of SB 309 is intended to expand the Attorney General's capacity for investigating, mediating, and filing injunctions for violations of this law. It also clarifies the legislature's intent that the Attorney General of Kansas should actively enforce this important law.

The commission is supportive of this bill and encourages you to recommend it favorably for passage to the full Senate.

I would be glad to answer any questions you may have. Thank you for your time.

1000 S.W. Jackson, Suite 100, Topeka, KS 66612-1354
Voice: (785) 296-1722 Toll Free: 1-800-295-5232
TTY: (785) 296-5044 Toll Free TTY: 1-877-340-5874 Fax: (785) 296-3490
www.kcdcinfo.com

*Senate Ways and Means
1-24-06
Attachment 3*

Testimony to the Senate Ways & Means Committee
concerning SB 309 which relates to the enforcement of
Kansas'accessibility standards for public buildings

January 24, 2006

Chairman Umbarger and Members of the Committee:

My name is Ray Petty and I chair the Legislative Committee for the Kansas Commission on Disability Concerns. KCDC's purpose is to "involve all segments of the Kansas community through legislative advocacy, education and resource networking to ensure full and equal citizenship for all Kansans with disabilities."

For the past decade I have worked with cities and counties and other entities throughout a four-state region in the Midwest (KS, IA, NE, and MO) providing training and technical assistance on the Americans with Disabilities Act (ADA), which I worked for passage of when I was Executive Director of Independence, Inc. in Lawrence. Before that, I was E.D. at the Topeka Independent Living Resource Center, and before that, for several years in the mid-1980s, I served as Legislative Liaison for KCDC. I've been involved in many pieces of legislation regarding people with disabilities in Kansas – including on several occasions the very law we're asking you to amend today.

Senate Bill 309 was introduced last year to fix an enforcement problem with the Kansas accessibility standards, a statute that has been on the books for over 25 years. As early as 1978, Kansas began paying attention to the need for constructing and renovating buildings to include accessibility features for people with disabilities. In the 1980s we didn't have the ADA, so we tried our best to solve problems with architectural barriers at state and local levels. The Kansas Access Standards have that purpose – to promote accessibility without making "a federal case" of it. Much progress has been made over the past 25 years in terms of architectural barrier removal and construction standards which aspire to universal design; that is: buildings that can be used by everyone.

During the 1980s, with the exception of a rollback in requirements for accessible housing units, the Kansas standards remained status quo. Not until 1991 did we ask for an amendment to make it clear that the

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Attorney General's office is "where the buck stops." The reason for that request was because of situations in Manhattan with no curb cuts on sidewalks, and in Hays with new construction, and other municipalities where it didn't seem as if attention was being paid to state law. We asked General Bob Stephan for an opinion on the matter and his stance was that every day buildings continued to be built or renovated ignoring these standards was a continuing violation of the law. We wanted to put an end to ignorance of, or simply ignoring the law. Our position was: "We really mean it this time!"

That was 15 years ago. In the meantime, subsequent to when the ADA was passed into federal law in 1990, and with the legislature's help, we successfully aligned the existing standards in Kansas with the newly published ADA Accessibility Guidelines commonly referred to as ADAAG (A dag). [The previous standards in Kansas were ANSI standards, not vastly different than the newer ADAAG -- in fact, ADAAG was largely adopted from ANSI.] Our purpose then, as now, was to avoid confusion and get everyone involved "on the same page."

Then, as now, we also felt enforcement as close to home as possible is best. Local governments which build according to ADAAG, and whose building inspectors enforce ADAAG when private sector construction or renovation occurs, are allies in civil rights when it comes to public facilities under Title II, and in the private sector, most of which is covered by Title III of the Americans with Disabilities Act. Those buildings are the same ones covered by the Kansas Accessibility Standards.

So why are we here before you asking for further support? Very simply, the Attorney General's office, when asked by my committee to report on enforcement of KSA 58-1301 et. Seq. told KCDC there was no staff in that office dedicated to this important law. Certainly, some letters were sent in response to complaints. A bit of public awareness may have been raised. But frankly, much of that was as a result of independent living centers and enterprises such as the ones I work for inviting a representative from the AG's office to speak on a panel about the need for accessible construction. I know this because I was often the person who invited that participation.

To cut to the chase --we were told that since the change in the law which occurred in 1991 [making it clear (we thought) that the AG's office was to

be the pinnacle of the state's enforcement mechanism] did not contain any additional funding, it was interpreted as legislative intent that not much different in terms of state government's commitment to equal access was expected. That isn't the "really mean it" solution we'd asked for and believe we'd secured back in 1991.

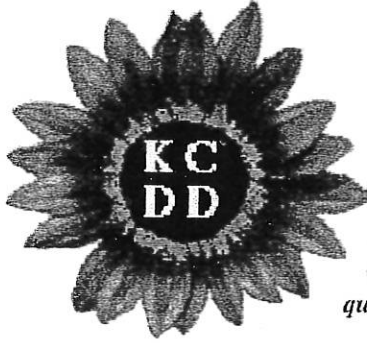
After all these years, and in cooperation with the Kansas Attorney General, we're here to ask you to set that record straight: to authorize additional staff as well as administrative and technical support to handle complaints promptly and thoroughly, to improve public awareness of these building requirements, to mediate disputes, and if necessary to file lawsuits in court to compel compliance with state law which is designed to include people with disabilities in the life and business of the state, instead of excluding them. In essence, I'm here asking you, through your actions to say: "We really, really mean it this time!"

Since the time of this bill's introduction – and as recently as last week – I've become aware of calls for a private right of action to be added to the bill. I know people who favor that position, I've communicated with at least one key supporter, and I can assure you that he is a friend of mine, that I'm not in disagreement with him on that matter, but that KCDC has not considered that position and therefore I don't have the authority to support it. Personally, I don't believe KCDC would oppose such a measure – but frankly, that's not the reason we asked for SB 309. We found something in the state governmental infrastructure that is broke and we're asking you to fix it.

We believe active promotion of accessibility by the Attorney General will go a long way to see to it that local government entities pay closer attention to the law and that over the next decade we'll see continued improvements in access as these expectations cascade from our state capitol and from communities which have already made great strides to other communities which may not have yet quite turned the corner on access. KCDC supports SB 309 and encourages you to recommend it favorably for passage, to vote for its passage in the Senate, as well as supporting this effort in any further debate and negotiation.

I would be glad to answer any questions you may have.

Thank you for your time.



Kansas Council on Developmental Disabilities

KATHLEEN SEBELIUS, Governor
DONNA BEAUCHAMP, Chairperson
JANE RHYS, Ph. D., Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison
Topeka, KS 66612-1570
Phone (785) 296-2608, FAX (785) 296-2861

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

SENATE WAYS AND MEANS COMMITTEE

January 24, 2006

Room 123-S

Mr. Chairperson, Members of the Committee, my name is Jane Rhys and I represent the Kansas Council on Developmental Disabilities. The Kansas Council on Developmental Disabilities supports Senate Bill 309, an act concerning accessibility standards for public buildings or facilities; relating to the enforcement thereof.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and receives no state funds. The Council is composed of individuals appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60% of the membership consists of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

We support the bill because it would increase the ability of the Attorney General's Office to enforce the Kansas accessibility standards.

As always, we appreciate the opportunity to provide information to you would be happy to answer any questions.

Jane Rhys, Executive Director
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
915 SW Harrison
Topeka, KS 66612-1570
785 296-2608
jrhys@alltel.net

*Senate Ways and Means
1-24-06
Attachment 5*

Self-Advocate
Coalition of Kansas

DATE: January 18, 2006

TO: House Ways & Means Committee

FROM: Kathy Lobb, Legislative Liaison
Self-Advocate Coalition of Kansas

RE: House Bill 309

Thank you for the opportunity to comment on House Bill 309.

My name is Kathy Lobb. I am representing the Self-Advocate Coalition of Kansas, better known as SACK. SACK is the state wide advocacy group for adults with developmental disabilities. SACK is made up of approximately 24 local advocacy groups across the state.

I am here to ask you to support this bill. SACK supports full community inclusion for people with disabilities. Therefore it is important that public places are accessible for everyone, including people with disabilities. I think it is a good idea for the attorney general's office to monitor compliance with the American with Disabilities Act. (ADA). It is easier to see that construction is done right in the first place than to go back and make changes to ensure compliance. Please vote in favor of this bill. It will help to ensure equal access to public facilities for all Kansas citizens.

I will stand for any questions. Thank you for your time.

Kathy Lobb



2518 Ridge Court,
Room 236
Lawrence, Kansas 66046

Phone: 1-888-354-7225 or
785-749-0121
Fax: 785-843-3728
Email: kssack123@aol.com
Web: kansassack.org

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Testimony of David P. Calvert
Senate Committee on Ways & Means
January 24, 2006

My name is David Calvert. I am an attorney practicing in Wichita, Kansas, and specialize in representing persons with disabilities, both in the personal injury field and in litigating ADA and related cases.

I am opposed to SB 309 in its present form, but a bit of history and a brief analysis of Kansas law is necessary in order to explain why.

K.S.A. 58-1301 *et seq* is sometimes known as the Kansas Accessibility Act. It adopts Title II – governing governmental entities – and Title III – governing public accommodations – as Kansas law. Enforcement actions may be brought by the attorney general, the city, county or district attorney, or any other person responsible for the enforcement of the act. To my knowledge, there have been no actions brought by any enforcement agency under this act since it was passed in 1978.

K.S.A. 44-1009, known as the Kansas Acts Against Discrimination, makes it unlawful for a public accommodation to discriminate against persons with disabilities. The law provides for procedures before the Kansas Human Rights Commission, and all of those procedures must be followed before a lawsuit is filed. However, there is no provision for the allowance of attorney fees and litigation expenses. This alone precludes virtually all persons with disabilities from filing suit under this act.

In the best of all worlds, the state of Kansas would provide staffing for enforcement of the Kansas Accessibility Act. However, in an era which demands money for the direct needs of persons with disabilities as well as the education of our children, the problem can be addressed by providing for a private cause of action, such as that used in the Kansas Consumer Protection Act.

I suggest to this Committee that a simple amendment to the Kansas Accessibility Act providing for a private cause of action is the preferable solution, unless this committee is willing to invest \$172,000 of taxpayer money to provide both solutions.

K.S.A. 58-1308 should be amended by borrowing the concept from the Kansas Consumer Protection Act which provides for a private cause of action. The following changes should be made:

K.S.A. 58-1308. Same; injunction to restrain violation of standards; attorney fees and litigation expenses. (a) The attorney general, the city, county or district attorney or any person *with a disability or organization of persons with disabilities*, person, agency or governmental entity responsible for the enforcement of this act may apply to the district court for a temporary or permanent injunction restraining any individual, corporation or partnership from violating the standards established by this act. Such court shall have jurisdiction upon hearing and for cause shown to grant such injunction. Such court may require the alteration of any facility by mandatory injunction to ensure compliance with the provisions of this act.

Testimony of David P. Calvert
Senate Committee on Ways & Means
January 24, 2006

(b) In any action commenced pursuant to this chapter, the court, in its discretion, may allow the prevailing party, if it is a person with a disability or an organization of persons with disabilities, a reasonable attorney's fee, including litigation expenses, and costs.

I strongly urge this Committee to address the problem of enforcement first, by adding the above language to the existing statute, and, if there are sufficient resources, to appropriate additional money to the attorney general's office. In closing I am opposed to SB 309 in its current form but would support amending it to allow for a private cause of action.

I'd be happy to answer any questions.