

CHAPTER 821

S.B. No. 540

AN ACT

relating to the elimination of architectural barriers encountered by persons with disabilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Article 9102, Revised Statutes, is amended to read as follows:

Sec. 2. APPLICATION. (a) The standards ~~[and specifications]~~ adopted under this article ~~[shall]~~ apply to:

(1) *a building or facility* ~~[all buildings and facilities]~~ used by the public *that is* ~~[which are]~~ constructed, *or substantially renovated, modified, or altered*, in whole or in part *on or after January 1, 1970, through* ~~[by]~~ the use of state, county, or municipal funds, or the funds of any political subdivision of the state;

(2) *the* ~~[. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective~~

~~date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department. If it is determined that full compliance is not practicable, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.~~

~~[(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to] temporary or emergency construction of a building or facility described by this subsection or Subsection (b) of this section;~~

~~(3) a building [as well as permanent buildings.~~

~~[(c) These standards and specifications shall be adhered to in all buildings] leased or occupied [rented] in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972;~~

~~(4) a privately funded building or facility[. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department. If it is determined that full compliance is not practical, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.~~

~~[(d) Except as otherwise provided in subsection (e) of this section, these standards and specifications shall be adhered to in buildings] defined as a "public accommodation" by Section 301(7) of the Americans with Disabilities Act [(ADA)] of 1990 (42 U.S.C. Section 12181), [(P.L. 101-336)] that is [are] constructed or substantially renovated, modified, or altered on or after January 1, 1992; and~~

~~(5) a privately funded building or facility defined as a "commercial facility" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), that is constructed or substantially renovated, modified, or altered on or after September 1, 1993.~~

~~(b) To the extent there is no conflict with federal law and it is not beyond the state's power of regulation, the standards adopted under this article also apply to a building or facility constructed in this state, or a building or facility leased or rented for use by the state, through the use of federal funds.~~

~~(c) [(e)] The commissioner may [shall have the authority to] waive or modify accessibility standards adopted under this article [and specifications] when:~~

~~(1) the application of the [such] standards [and specifications] is considered by the commissioner to be irrelevant to the nature, use, or function of a building or facility covered by this article; or~~

(2) *the owner of a building or facility that is the subject of a request for a waiver or modification of a standard under this subsection, or the owner's designated agent, presents proof to the commissioner that compliance with the particular standard is impracticable.*

(d) *An owner of a building described by Subsection (a)(3) of this section or of a building or facility leased or rented for use by the state through the use of federal funds, or the owner's designated agent, must present to the commissioner the proof required by Subsection (c)(2) of this section before the date the owner:*

(1) *submits a bid proposal in relation to the award of a contract for the lease or rental of the building or facility; or*

(2) *is awarded the contract for the lease or rental of the building or facility if the state does not advertise for bids.*

(e) *The commissioner may ~~shall~~ not waive or modify any standard or specification when:*

(1) *waiving or modifying a standard or specification ~~[such action]~~ would result in a significant impairment of the acquisition of goods and services by persons with disabilities or substantially reduce the potential for employment of persons with disabilities; or*

(2) *the proof presented to the commissioner under Subsection (c)(2) of this section is not adequate.*

(f) *All evidence supporting waiver or modification determinations made by the commissioner shall be made a matter of record and become part of the file system maintained by the department.*

SECTION 2. Section 5, Article 9102, Revised Statutes, is amended by amending Subsections (b), (d), and (e) and adding Subsection (f) to read as follows:

(b) *The commissioner has ~~[shall have]~~ all necessary powers to require compliance with the department's ~~[commissioner's]~~ rules and regulations and modifications thereof and substitutions therefor. The commission may also impose an administrative penalty under Section 17, Article 9100, Revised Statutes, on a building owner for a violation of this article or a rule adopted under this article. Each day that the violation is not corrected constitutes a separate violation. The commissioner when the commission considers imposing an administrative penalty under this section, shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commissioner shall have the authority to extend the 90-day period when circumstances justify such extension.*

(d) *All plans and specifications for construction or for the substantial renovation, modification, or alteration of a building or facility that has an estimated construction cost of \$50,000 or more and that is ~~[buildings]~~ subject to the provisions of this article shall be submitted to the department for review and approval prior to the time that construction or that substantial renovation, modification, or alteration on the building or facility begins in accordance with rules and regulations adopted by the commissioner. Plans ~~[The plans]~~ and specifications related to the building or facility shall be submitted to the department by the architect, interior designer, or engineer who has overall responsibility for the design of the constructed or reconstructed building or facility. The ~~[building]~~ owner shall submit the plans and specifications to the department if there is no architect, interior designer, or engineer with that responsibility ~~[unless the cost of the construction or reconstruction project is less than \$50,000]~~. Likewise, any substantial modification of approved plans shall be resubmitted to the department for review and approval. The plans and specifications that are not approved or disapproved by the department within 30 days from the receipt of the plans and specifications are automatically approved. If an architect, interior designer, or engineer required to submit or resubmit plans and specifications to the department fails to do so in a timely manner, the commissioner shall report the fact to the Texas Board of Architectural Examiners or the State Board of Registration for Professional Engineers, as appropriate.*

(e) *The commissioner may review plans and specifications, make inspections, and issue certifications that structures not otherwise covered by this article are free of architectural barriers and in compliance with the provisions of this article. The department shall inspect each building and facility that has an estimated construction cost of \$50,000 or more and that is subject to this article not later than ~~[within]~~ the first anniversary of ~~[year after]~~ the date that construction or substantial renovation, modification, or alteration of the building or*

facility is completed. The department shall inspect each building that is subject to this article because of a lease to the state during the first year of the lease.

(f)(1) The commissioner shall contract with a municipality to perform the commissioner's review and inspection functions for privately financed buildings that are not leased by the state or a political subdivision if:

(A) the municipality requests permission to perform such duties;

(B) the municipality is staffed with a sufficient number of qualified personnel to perform such duties in the judgment of the commissioner; and

(C) the municipality agrees to contract terms required by the commissioner.

(2) The commissioner shall require municipal personnel who perform such duties to comply with qualification or certification requirements adopted or approved by the commissioner. The commissioner, not later than April 1, 1994, shall adopt qualification requirements or implement certification programs under this subsection and shall commence entering into contracts with municipalities qualifying under this subsection.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 28, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 28, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.