

# ACCESSIBILITY CODE WORKGROUP REPORT TO THE FLORIDA BUILDING COMMISSION



February 2, 2009

*Melbourne, Florida*

Facilitation, Meeting and Process Design By



CONSENSUS SOLUTIONS

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# **FLORIDA BUILDING COMMISSION FLORIDA ACCESSIBILITY CODE WORKGROUP REPORT**

**February 2, 2009**

## **OVERVIEW**

The scope of the Workgroup is to develop recommendations for amending the Florida Accessibility Code for Building Construction once the US Department of Justice completes its adoption of the next generation of the ADA Accessibility Standards. The task is to integrate the relevant Florida standards in ss. 553.501-553.513, F.S., into the 2004 ADAAG as adopted by 28 CFR 36 (prospective). Although DOJ's process is not complete, the Workgroup will begin with the 2004 ADAAG and modify the new draft FACBC to reflect DOJ's amendments when those are available.

The process for developing the new Accessibility Code will be divided into major tasks as follows:

### Task 1:

Integration of Florida standards located in the current Florida Accessibility Code into sections of the 2004 ADAAG that have a one for one parallel section.

### Task 2:

Deciding what to do with Florida standards that are in sections/subsections of 1994 SAD that do not have a one for one parallel section in the 2004 ADAAG.

### Task 3:

Integration of Florida standards into new sections in the 2004 ADAAG that have no parallel in the Florida Accessibility Code (e.g., recreational facilities).

### Task 4:

Revising the draft Florida Accessibility Code based on the 2004 ADAAG for changes made by DOJ in its rule making.

## **MEMBERS AND REPRESENTATION**

Raul L. Rodriguez, AIA, Chair of the Florida Building Commission, made the following appointments to the Florida Accessibility Code Workgroup. Members are charged with representing their stakeholder group's interests, and working with other interest groups to develop consensus package(s) of recommendations for submittal to the Commission.

Pam Darworth, Michael Elliot, Bemmie Eustace, Kiko Franco, Skip Gregory, Jeff Gross, Jon Hamrick, Jack Humburg, Julia Kates, Neal Melick, Sharon Mignardi, Bill Norkunas, Barbara Page, Ben Ritter, Larry Schneider, Jim Schock, Randy Vann, Bob Vincent, Steve Watson, Soy Williams, and Phillip Wisely.

# REPORT OF THE FEBRUARY 2, 2009 MEETING

## Opening and Meeting Attendance

The meeting started at 1:00 PM, and the following Workgroup members were present: Pam Darworth, Bemmie Eustace, Kiko Franco, Skip Gregory, Jeff Gross, Jon Hamrick, Jack Humburg, Diana Ibarra, Julia Kates, Sharon Mignardi, Bill Norkunas, Barbara Page, Larry Schneider, Jim Schock, Shelley Siegel, Randy Vann, Bob Vincent, Steve Watson, Soy Williams, and Phillip Wisely.

## DCA Staff Present

Rick Dixon, Bruce Ketcham, and Mo Madani.

## Meeting Facilitation

The meeting was facilitated by Jeff Blair from the Florida Conflict Resolution Consortium at Florida State University. Information at: <http://consensus.fsu.edu/>



## Project Webpage

Information on the project, including agenda packets, meeting reports, and related documents may be found in downloadable formats at the project webpage below:

<http://consensus.fsu.edu/FBC/accessibility-code.html>

## Agenda Review and Approval

The Workgroup voted unanimously, 18 - 0 in favor, to approve the agenda as presented including the following objectives:

- ✓ To Approve Regular Procedural Topics (Agenda)
- ✓ To Review Workgroup Procedures, Guidelines, and Decision-Making Requirements
- ✓ To Hear an Overview of the Workgroup's Scope, Charge, and Task Development Strategy
- ✓ To Discuss Project Tasks and Identify Information Development Needs
- ✓ To Consider Public Comment
- ✓ To Identify Needed Next Steps and Agenda Items for Next Meeting

## Review of Commission's Workgroup Meeting Guidelines, Consensus-Building and Decision-Making Process, and Sunshine Requirements

Jeff Blair, Commission Facilitator, reviewed the Workgroup's process, decision-making procedures, and applicability of the Sunshine Law and answered member's questions. The relevant documents were provided on pages 3 – 6 of the meeting agenda packet.

## **Review of Workgroup’s Scope and Charge**

Rick Dixon, FBC Executive Director, explained that the scope of the Workgroup is to develop recommendations for amending the Florida Accessibility Code for Building Construction once the US Department of Justice completes its adoption of the next generation of the ADA Accessibility Standards. The task is to integrate the relevant Florida standards in ss. 553.501-553.513, F.S., into the 2004 ADAAG as adopted by 28 CFR 36 (prospective). Although DOJ's process is not complete, the Workgroup will begin with the 2004 ADAAG and modify the new draft FACBC to reflect DOJ's amendments when those are available. Rick explained that DOJ has delayed the rule development process pending a review by the Obama Administration. See overview for project tasks. An opportunity was provided for questions and answers.

The Workgroup was asked as a threshold question whether to proceed with consideration regarding integrating the Florida Specific requirements into the DOJ SAJ, June 2008 or delay pending completion of rulemaking.

### ***Workgroup Action:***

**Motion**—The Workgroup voted unanimously, 18 - 0 in favor, to move forward with developing the new Florida Accessibility Code without delay.

### ***Summary of Discussion and Participant’s Questions and Comments:***

BN: urge pursuing now not waiting; concern with the time Florida processes take to adopt new codes; concern with Florida Code being out of sync with the new DOJ SAD, June 2008.

DI: need to press ahead and shorten the time between effective time of SAD and FACBC.

PD: are US DOT corrections in the ADAAG?

JG: we should move ahead without delay.

BE: we should move ahead because of having to design to two standards.

KF: we should move ahead.

JS: we should move ahead from building departments perspective.

LS: let’s talk about tasks for the project.

*(Attachment 2—Project Scope and Tasks)*

## **Review of Workgroup’s Task Development Strategy**

Rick Dixon, FBC Executive Director, reviewed the Workgroup’s key tasks and answered member’s questions. The Project’s Tasks are as follows:

Task 1:

Integration of Florida standards located in the current 2004 FACBC (Florida Accessibility Code) into sections of the 2004 ADAAG that have a one for one parallel section.

Task 2:

Deciding what to do with Florida standards that are in sections/subsections of 1994 SAD that do not have a one for one parallel section in the 2004 ADAAG.

Task 3:

Integration of Florida standards into new sections in the 2004 ADAAG that have no parallel in the Florida Accessibility Code (e.g., recreational facilities).

Task 4:

Revising the draft Florida Accessibility Code based on the 2004 ADAAG for changes made by DOJ in its rule making.

### **Discussion of Project Tasks and Identification of Information Development Needs**

Members were asked to have a preliminary discussion on the key project tasks and to identify any needed documents/information. In addition, members of the public were invited to provide comments on same.

#### *Overview and Summary of Discussion and Participant's Questions and Comments:*

LS: we should consider dividing into two tasks: Task A and Task B as follows:

Task A: use ANSI standard.

Task B: Review whether all of the current Florida specific requirements are necessary (i.e., 18" extension of handrails, why is there an extra foot difference in Florida; eliminate anything in Florida Code that the DOJ handles). Use code type language.

JG: Larry's approach would require a change of law.

BE: we had to deal with a lot of problems from the current law, so should entertain changing directions now while we have the chance.

SG: there is an issue with geriatric patients in nursing homes that needs to be addressed. Would like to see this taken up and resolved during this process.

SW: this is an opportunity to address some recreational issues (outdoor recreation particular).

PD: I agree with addressing these other issues in the Code.

PW: this is an opportunity to take information from CFR on historic buildings and put in the Florida Code.

JS: we should clarify application to churches as well.

SG: what is target for Workgroup's work product? See Workplan: Attachment 3.

BV: we need to look at Federal guidelines for pools.

JH: can we adopt the New ADAAG with lesser standards than current? Requires Legislation.

SG: can we develop new document and go to 2010 Legislature for additional authority? Yes.

SW: adopting IBC/ANSI will cause major complications. Chicago did this and ran into glitches. My first reaction is to stick with working with 2004 ADAAG/2009 SAD.

JG: don't know if DOJ is going to certify Chapter 11 of IBC. This could be an issue.

DI: we need to focus on narrowing the window between when DOJ SAD is implemented and the 2009 FACBC is implemented.

SW: will all new sections of ADAAG be adopted (i.e., children's facilities, etc.)?

LS: to ensure enforceability and clarity we should recommend the language in law be put in code language.

LS & SW: let's use the DOJ June 2008 version of SAD as a base document.

JG: we should also use the FACBC March 1, 2009 as a base document.

PW: how would the Access Board staff's amendments of the 2004 ADAAG effect Federal Standards?

SW: they were not included in the DOJ's published version.

PD: DOJ adopted 2004 ADAAG without 2005 amendments.

LS: the follow-up step is to correlate FACBC to other chapters and volumes of the FBC.

### *Options for Workgroup's Task:*

Option 1: as Workgroup integrate Florida specifics into ADAAG make threshold determination of whether to recommend removing some of the Florida specifics.

Option 2: integrate all current Florida specifics into the DOJ SAD, and concurrently make a recommendations on each, with recommendations forwarded to the Legislature for improvements or removal of any current Florida Specifics. (Note: this is Option 1 in reverse.)

Option 3: Option 2 including recommendations on the other ancillary topics member's recommended (i.e., recreational facilities, churches, geriatric patients in nursing homes, children's facilities, etc).

### ***Workgroup Action:***

**Motion**—The Workgroup voted unanimously, 18 - 0 in favor, to integrate all current Florida Specific requirements into the Proposed DOJ SAD, June 2008, and concurrently evaluate and make recommendations on the Florida Specific requirements and ancillary topics, with recommendations forwarded to the Legislature for enhancements or removal of specific Florida requirements and ancillary issues (Option 3).

### **General Public Comment**

Members of the public were invited to provide the Workgroup with comments.

There were no general public comments provided. Members of the public spoke on each of the substantive discussion issues before the Workgroup.

### **Review of Workgroup Delivery and Meeting Schedule**

The Workgroup's tentative meeting schedule for 2009 is as follows:

February 2, April 6, June 8, and August 10, 2009.

*(Attachment 3—Project Workplan)*

### **Next Steps**

- Provide members with an electronic copy of the DOJ SAD, June 2008, "Proposed ADA Standards for Accessible Design" document.
- Provide members with an electronic version of FACBC 2009.
- Staff should provide an example/template for how to provide recommendations for integrating the Florida Specific requirements into the DOJ SAD, June 2008 documents.
- Jeff Gross offered to provide an example of above request.

### **Assignments**

Members agreed to provide written feedback to Jeff Blair by March 5, 2009 regarding recommendations for integration of where to place the Florida Specific Requirements in the DOJ SAD, June 2008, "Proposed ADA Standards for Accessible Design" as follows:

Group 1 should provide recommendations for the following components

(Skip Gregory, Jon Hamrick, Barbara Page, Jim Schock and Soy Williams):

- (1) All new single-family houses, duplexes, triplexes, condominiums, restroom...
- (2) All required doors and walk-through openings in buildings width...
- (3) In addition to the requirements in reference 4.8.4 of the guidelines, all landings...
- (4) All curb ramps shall be designed and constructed in accordance with the...

Group 2 should provide recommendations for the following components

(Pam Darworth, Neil Melick, Bill Norkunas, Ben Ritter, Randy Vann, and Bob Vincent):

- (5) Exterior hinged doors shall be so designed that such doors can be pushed or pulled...
- (6) Public food service establishments, all establishments licensed under the Beverage Law for consumption on the premises, and all facilities governed by reference 4.1 of the guidelines shall provide seating or spaces for seating in accordance with the...
- (7) All aisles adjacent to fixed seating shall provide clear space for wheelchairs...
- (8) In motels and hotels a number of rooms equaling at least 5 percent of the guest...

Group 3 should provide recommendations for the following components

(Kiko Franco, Jack Humburg, Sharon Mignardi, Shelley Siegel, and Steve Watson):

- (9) Detectable warning surfaces required by the guidelines shall be governed by the...
- (10) Guidelines, the installation and placement of all public telephones shall be governed...
- (11) Guidelines, required restrooms and toilet rooms in new construction shall be...
- (12) All customer checkout aisles not required by the guidelines to be handicapped...

Group 4 should provide recommendations for the following components

(Bemmie Eustace, Jeff Gross, Diana Ibarra, Julia Kates, Larry Schneider, and Phillip Wisely):

- (13) Turnstiles shall not be used in occupancies which serve fewer than 100...
- (14) Barriers at common or emergency entrances and exits of business...
- (15) Parking...
- (16) Barrier removal...
- (17) Vertical accessibility...

### **Adjournment**

The Workgroup voted unanimously, 18 – 0 in favor, to adjourn at 4:00 PM.

**ATTACHMENT 1**  
**MEETING ATTENDANCE**

NAME	REPRESENTATION	E-MAIL & PHONE
Julie Kates	DOE/DVR Indep. Living	<a href="mailto:Julia.kates@vr.fldoe.org">Julia.kates@vr.fldoe.org</a> 850-245-338
Phillip Wisley	DOS/BHP	<a href="mailto:pwisley@dos.state.fl.us">pwisley@dos.state.fl.us</a> 850-245-6333
Larry M. Schneider	AIA Florida	<a href="mailto:larry@lmsarch.net">larry@lmsarch.net</a> 786-336-1984
Bemmie Eustace	Interplan-Arch/Civil Eng	<a href="mailto:beustace@interplanorlando.com">beustace@interplanorlando.com</a> 407-654-5008
Diana Ibarra	Ibarra Collaboration Int'k Inc.	<a href="mailto:didarra@ibarra.net">didarra@ibarra.net</a> 407-895-9565
Jeffery Gross	BOMA/Commercial Real	jgaajg@@bellsouth.net 954-925-3964
Steve Watson	DEP/FLA. Park service	<a href="mailto:Steve.Watson@dep.state.fl.us">Steve.Watson@dep.state.fl.us</a> 850-488-5372
Kiko Franco	Architects	<a href="mailto:Kiko.franco@gmail.com">Kiko.franco@gmail.com</a> 954-523-9609
Sharon Mignardi	Building Official/ Access TAC	<a href="mailto:smignardi@att.net">smignardi@att.net</a> 407-677-1102
Jack Humburg	Baley Centers INC.	<a href="mailto:jackhumburg@boleycenters.org">jackhumburg@boleycenters.org</a> 727-821-4819
Pam Darworth	FL. Accessibility Council	<a href="mailto:ladypd@juno.com">ladypd@juno.com</a> 941-586-8136/ 850-230-8222
Barbara Page	Advocacy Center/ Persons with Disabilities	<a href="mailto:barbp@advocacycenter.org">barbp@advocacycenter.org</a> 727-341-7393
Skip Gregory	Agency for Healthcare	<a href="mailto:gregorys@ahca.myflorida.com">gregorys@ahca.myflorida.com</a>
John Hamrick	Dept. of Education	<a href="mailto:Jon.hamrick@fldoe.org">Jon.hamrick@fldoe.org</a>
James Schock	Building official	<a href="mailto:schock@coj.net">schock@coj.net</a>
Bill Norkunas	ADA Help. INC	<a href="mailto:billnorkunas@adahelp.com">billnorkunas@adahelp.com</a> 954-871-9733
Rick Dixon	FBC/DCA	<a href="mailto:Rick.Dixon@dca.state.fl.us">Rick.Dixon@dca.state.fl.us</a>
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Mary Kathryn Smith	FBC/DCA	<a href="mailto:Mary.Kathryn.smith@dca.state.fl.us">Mary.Kathryn.smith@dca.state.fl.us</a>
Bruce Ketcham	FBC/DCA	<a href="mailto:Bruce.ketcham@dca.state.fl.us">Bruce.ketcham@dca.state.fl.us</a>
Soy Williams	Self	<a href="mailto:soy@soywilliamsconsulting.com">soy@soywilliamsconsulting.com</a> 305-238-9740
Bob Vincent	Dept. of Health	<a href="mailto:Bob_Vincent@doh.state.fl.us">Bob_Vincent@doh.state.fl.us</a> 850-245-4578

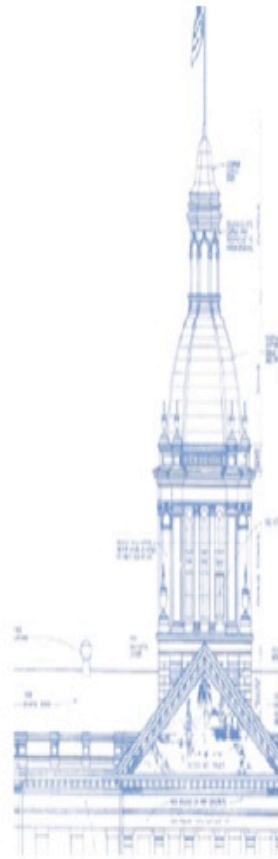


## ATTACHMENT 2

### PROJECT SCOPE AND TASKS

#### ❖ *Starting Assumptions:*

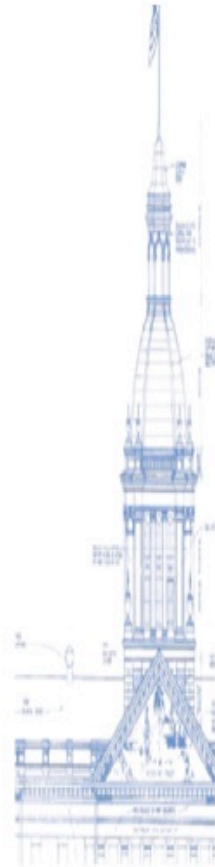
- We are implementing only existing "policies" for Florida standards that go beyond federal standards
- We will work on developing a new Code to be adopted by Rule 9B-7 first then propose conforming amendments to correct section number references in the law
- We will follow the Code amendment authority of current law
- DOJ will complete its work on Standards for Accessible Design (SAD) this year



- ❑ **553.502 Intent.**--The purpose and intent of ss. [553.501-553.513](#) is to incorporate into the law of this state the accessibility requirements of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 42 U.S.C. ss. 12101 et seq., and to obtain and maintain United States Department of Justice certification of the Florida Accessibility Code for Building Construction as equivalent to federal standards for accessibility of buildings, structures, and facilities. **All state laws, rules, standards, and codes governing facilities covered by the guidelines shall be maintained to assure certification of the state's construction standards and codes.** Nothing in ss. [553.501-553.513](#) is intended to expand or diminish the defenses available to a place of public accommodation under the Americans with Disabilities Act and the federal Americans with Disabilities Act Accessibility Guidelines, including, but not limited to, the readily achievable standard,

- ❑ **553.506 Powers of the commission.**--In addition to any other authority vested in the Florida Building Commission by law, the commission, in implementing ss. [553.501-553.513](#), **may, by rule, adopt revised and updated versions of the Americans with Disabilities Act Accessibility Guidelines in accordance with chapter 120.**

- ❑ **553.503 Adoption of guidelines.**--Subject to the exceptions in s. [553.504](#), the **Americans with Disabilities Act Accessibility Guidelines, as adopted by reference in 28 C.F.R., part 36, subparts A and D, and Title II of Pub. L. No. 101-336,** are hereby adopted and incorporated by reference as the law of this state. The guidelines shall establish the minimum standards for the accessibility of buildings and facilities built or altered within this state. The 1997 Florida Accessibility Code for Building Construction must be adopted by the Florida Building Commission in accordance with chapter 120. federal Adoption of guidelines





## Proposed ADA Regulations Withdrawn from OMB Review

On January 21, 2009, the Department of Justice notified the Office of Management and Budget (OMB) that **the Department has withdrawn its draft final rules to amend the Department's regulations implementing title II and title III from the OMB review process.** This action was taken in response to a memorandum from the President's Chief of Staff directing the Executive Branch agencies to defer publication of any new regulations until the rules are reviewed and approved by officials appointed by President Obama. No final action will be taken by the Department with respect to these rules until the incoming officials have had the opportunity to review the rulemaking record. Incoming officials will have the full range of rule-making options available to them under the Administrative Procedure Act.

Withdrawal of the draft final rules does not affect existing ADA regulations. Title II and title III entities must continue to follow the Department's existing ADA regulations, including the ADA Standards for Accessible Design.

# 2009 Florida Access Code Development Tasks

- Task 1: Integrate Florida standards with correlating sections into 2004 ADAAG*
- Task 2: Integrate Florida standards without correlating sections into 2004 ADAAG*
- Task 3: Integrate Florida standards into new or expanded 2004 ADAAG sections*
- Task 4: Integrate DOJ modifications of 2004 ADAAG into draft 2009 FACBC*

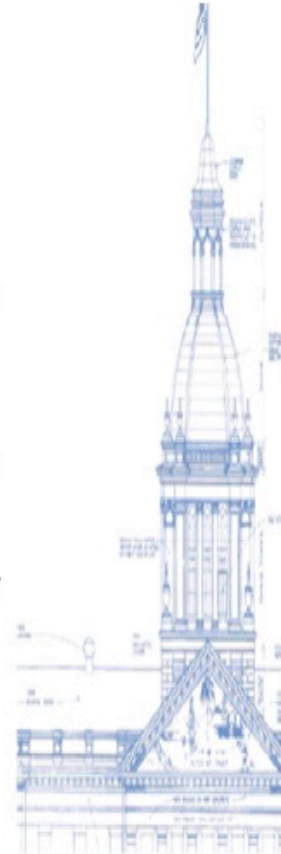


## ATTACHMENT 3

### PROJECT TASKS WORKPLAN

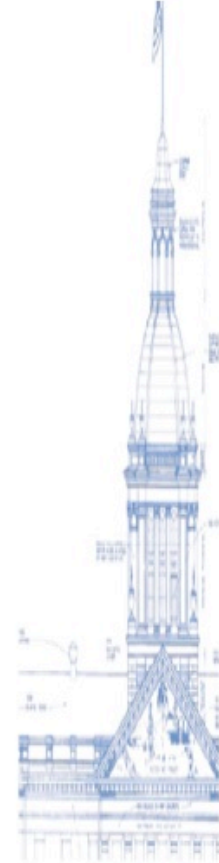
#### ❖ *Starting Assumptions:*

- We will be following the Code amendment authority of current
- We are implementing only existing "policies" for Florida standards that go beyond federal standards
- We will work on developing a new Code to be adopted by Rule 9B-7 first then propose conforming amendments to correct section number references second
- DOJ will complete its work on Standards for Accessible Design (SAD) this year



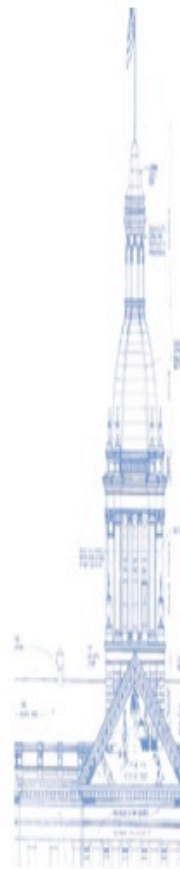
## ❖ Florida Law *FS 553.501-553.513*

- ❑ **553.502 Intent.**--The purpose and intent of ss. [553.501-553.513](#) is to incorporate into the law of this state the accessibility requirements of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 42 U.S.C. ss. 12101 et seq., and to obtain and maintain United States Department of Justice certification of the Florida Accessibility Code for Building Construction as equivalent to federal standards for accessibility of buildings, structures, and facilities. **All state laws, rules, standards, and codes governing facilities covered by the guidelines shall be maintained to assure certification of the state's construction standards and codes.** Nothing in ss. [553.501-553.513](#) is intended to expand or diminish the defenses available to a place of public accommodation under the Americans with Disabilities Act and the federal Americans with Disabilities Act Accessibility Guidelines, including, but not limited to, the readily achievable standard.
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## ❖ Florida Administrative Code (FAC) Chapter 9B-7

- ❑ Adopt by reference the 1997 Florida Accessibility Code for Building Construction (FACBC)
- ❑ The Accessibility Code is located in Chapter 11, of the 2004 Florida Building Code Building volume (FBC),.
- ❑ 1997 FACBC was certified by the Department of Justice\* (DOJ) as equivalent or greater than the base federal document 1990 ADAAG
- ❑ The Code is a collaborative effort of ADAAG and the Florida specific requirements that were added Legislatively to the current Code. The Florida specific language is denoted with FACBC Chapter 11 in grey boxes for clarity.
- ❑ \*DOJ has certified a total of 4 states: Florida, Washington, Texas, North Carolina and Maine. Additionally the following states are seeking certification: Indiana, California, Utah, Michigan & New Jersey

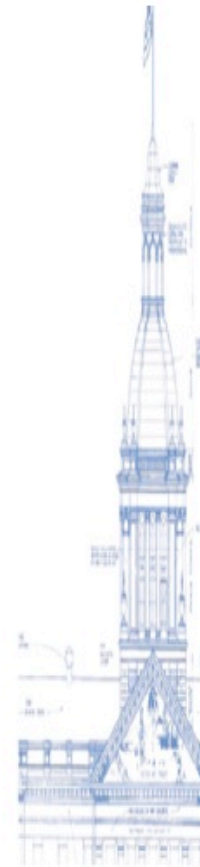


# 2004 Florida Building Code FACBC

## ❖ *Application*

Florida law, authority F.S. 553.503 Adoption of Americans with Disability Guidelines or ADAAG:

- ❑ Places of public accommodation and commercial facilities – Federal law, Title III, 28 CFR Part 36  
**Examples:** Stores, businesses and medical facilities
- ❑ Program Accessibility to State and local facilities – Federal law Title II, 28 CFR Part 35  
**Examples:** State and local buildings, public schools, libraries
- ❑ Private clubs – Florida specific requirement and considered a place of public accommodation  
**Examples:** Fraternal organizations, etc





# 2004 Florida Building Code FACBC

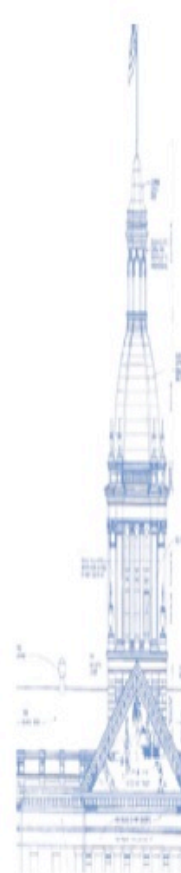
## ❖ *Technical Requirements: Accessible Elements & Spaces*

### **Examples of elements, spaces & technical requirements are:**

- Path of Travel
- Parking
- Elevators
- Toilet rooms and stall Facilities
- Ramps
- Signage
- Telephones

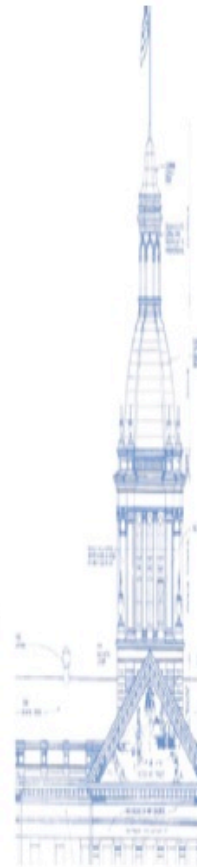
### **Note:** Typical covered facilities include the following:

Restaurants, Medical Care facilities, Business establishments, Libraries, Lodging, Hotels etc, Transportation and Public facilities



## ❖ *Accessibility Advisory Council*

- ❑ Authority – F.S. 553.512
- ❑ *7 member body appointed by Secretary of the Department of Community Affairs (DCA)*
- ❑ *Criteria for granting of waivers:*
  - 1) *That a hardship is caused by a condition or set of conditions affecting the owner which does not affect owners in general*
  - 2) *That substantial financial costs will be incurred by the owner if the waiver is denied*
  - 3) *That the owner has made a diligent investigation into the costs of compliance*



## ❖ *Florida Accessible Waiver Process*

- ❑ *Application filed with DCA*
- ❑ *Accessibility Council reviews waiver application*
- ❑ *Council makes recommendations to the Commission*
- ❑ *DCA legal issues a final order on waiver*
- ❑ *Waiver covers only Florida specific requirements*
- ❑ *Waivers not to include Federal base document or Americans Disability Act Accessibility Guidelines or ADAAG.*
- ❑ *All waivers must meet criteria as addressed in Code and Fl. Statute*

