

REPORT OF THE DIVISION OF THE STATE ARCHITECT
State Allocation Board Meeting, February 23, 2005

IMPACT OF THE AMERICANS WITH DISABILITIES ACT
ON THE EMERGENCY REPAIR PROGRAM - SENATE BILL 6 (CHAPTER 899/2004)

PURPOSE OF REPORT

To present a report by the Division of the State Architect (DSA) addressing the fiscal impact of the Americans with Disabilities Act (ADA) requirements on the Emergency Repair Program (ERP).

DESCRIPTION

The State Allocation Board (SAB), at its January 2005 meeting, expressed an interest in knowing what impact the ADA requirements enforced by the DSA would have on the limited funding resources available for the ERP. The Board asked the DSA to bring back a report to the February 23, 2005 SAB meeting to provide clarification on this matter.

The attached report has been provided by the DSA in response to the Board's request. The DSA indicated that it would have representatives available at this meeting to present this report and address questions of the Board.

The Division of the State Architect presented this report to the State Allocation Board on February 23, 2005, addressing the fiscal impact of the Americans with Disabilities Act requirements on the Emergency Repair Program.

DEPARTMENT OF GENERAL SERVICES
Division of the State Architect
Emergency Repairs Grant Program and
State Accessibility Regulations
Senate Bill 6, Chapter 899, Statutes of 2004
January 18, 2004

For purposes of this legislation, "emergency facilities needs" means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school, and does not include cosmetic or non essential repairs.

While improving school facilities, compliance with the California Building Code is required. Regarding accessibility for existing buildings, the building code provisions apply to renovation, structural repair, alteration and additions to existing buildings, including those identified as historic buildings.

All existing buildings and facilities, when alterations, structural repairs or additions are made to such buildings or facilities, shall comply with the accessibility requirements for new buildings¹. These requirements apply only to the area of specific alteration, structural repair or addition and include a primary entrance to the building or facility, the primary path of travel to the specific area of alteration, structural repair or addition, and sanitary facilities, drinking fountains, signs and public telephones serving the area.

However, an exception² to these requirements provides that for projects which consist only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by the code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals, office equipment, etc., are not considered alteration projects for the purposes of accessibility for persons with disabilities.

Due to the nature of the work that may be proposed, it is anticipated that many projects established under this program may qualify for the exception mentioned above. In such cases, the project is exempt from triggering upgrades for accessibility. However, not all projects will qualify for this exception. For those projects that do not qualify, the minimum building code requirements must be met, and accessibility upgrades to a varying extent (depending on the project's particular circumstances) will be required.

Design professionals, facility directors, and other school administrative personnel should be made aware it is possible that some projects established under this program will trigger additional work beyond that which is planned solely for the emergency repairs. Such additional work should be addressed during project planning budgeting, construction documentation and the approval process.

¹ California Building Code Section 1134B.2

² California Building Code Section 1134B.2.1 Exception 4

It should be understood however, that the California Building Code does not address the school's obligations under federal law per Title II of the Americans with Disabilities Act (ADA). Under Title II, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity. This protection also extends to all state education agencies including elementary and secondary schools, colleges and universities. It is the school's responsibility under ADA Title II to complete a self-evaluation by January 26, 1993. Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must do a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by January 26, 1995.

As opposed to California Building Code requirements, the ADA Title II requirement to remove these barriers is not triggered by alterations or remodeling, but rather is an ongoing and continuous obligation to ensure that educational programs are accessible to persons with disabilities in the most integrated setting appropriate.

To assist in the understanding of the code requirements for accessibility in existing buildings, the relevant sections of the California Building Code are repeated below:

California Code of Regulations Title 24, Part 2, Volume 1

SECTION 1134B – ACCESSIBILITY FOR EXISTING BUILDINGS

1134B.1 Scope. The provisions of this division apply to renovation, structural repair, alteration and additions to existing buildings, including those identified as historic buildings. This division identifies minimum standards for removing architectural barriers, and providing and maintaining accessibility to existing buildings and their related facilities.

1134B.2 General. All existing buildings and facilities, when alterations, structural repairs or additions are made to such buildings or facilities, shall comply with all provisions of Division I, New Buildings, except as modified by this division. These requirements shall apply only to the area of specific alteration, structural repair or addition and shall include those areas listed below:

1134B.2.1 A primary entrance to the building or facility and the primary path of travel to the specific area of alteration, structural repair or addition, and sanitary facilities, drinking fountains, signs and public telephones serving the area.

EXCEPTIONS:

1. When the total construction cost of alterations, structural repairs or additions does not exceed a valuation threshold of \$50,000, based on January 1981, "ENR US20 Cities" Average construction cost index of 3372.02 (Engineering News Record, McGraw Hill Publishing Company), and the enforcing agency finds that compliance with this code creates an unreasonable hardship, compliance shall be limited to the actual work of the project. The enforcing agency shall annually update the valuation threshold to a current amount based on the increase in the index since the last figure used. (For example, the January 2000 amount is \$90.895.07.) For purposes of this exception, an unreasonable hardship exists where the cost of providing an accessible entrance, path of travel, sanitary facilities, public phones and drinking fountains, is disproportionate to the cost of the project; that is, where it exceeds 20 percent of the cost of the project without these features. Where the cost of alterations necessary to make these features fully accessible is disproportionate, access shall be provided to the extent that it can be without incurring disproportionate cost. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:
 - 1.1 An accessible entrance,
 - 1.2 An accessible route to the altered area,
 - 1.3 At least one accessible restroom for each sex,
 - 1.4 Accessible telephones,
 - 1.5 Accessible drinking fountains, and
 - 1.6 When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide access may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking. If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of

the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate. Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

2. Certain types of privately funded, multi-story buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of the effective date of this regulation are no longer exempt due to more restrictive provisions in the federal Americans with Disabilities Act. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20 percent disproportionality provisions described in Exception 1, above, even if the value of the project exceeds the valuation threshold in Exception 1. The types of buildings and facilities are:
 - 2.1 Office buildings and passenger vehicle service stations of three stories or more and 3,000 or more square feet (279m²) per floor.
 - 2.2 Offices of physicians and surgeons.
 - 2.3 Shopping centers.
 - 2.4 Other buildings and facilities three stories or more and more than 3,000 square feet (279 m²) per floor if a reasonable portion of services sought and used by the public is available on the accessible level.

NOTE: For the general privately funded multistory building exception applicable to new construction and alterations, see Section 1103B.1, Exception 2.1.

3. Alterations, structural repairs or additions consisting of one or more of the following shall be limited to the actual work of the project:
 - 3.1 Altering one building entrance to meet accessibility requirements.
 - 3.2 Altering one existing toilet facility to meet accessibility requirements.
 - 3.3 Altering existing elevators to meet accessibility requirements.
 - 3.4 Altering existing steps to meet accessibility requirements.
 - 3.5 Altering existing handrails to meet accessibility requirements.
 - 3.6 Alteration solely for the purpose of removing barriers undertaken pursuant to the requirements of Sections 36.402 and 36.404 through 36.406 of Title III of the Department of Justice regulations promulgated pursuant to the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R. Section 36.402, 28 C.F.R. Section 36.404, 28 C.F.R. Section 36.405, and 28 C.F.R. 36.406) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended, including the following:
 - 3.6.1 Installing ramps
 - 3.6.2 Making curb cuts in sidewalks and entrance
 - 3.6.3 Repositioning shelves
 - 3.6.4 Rearranging tables, chairs, vending machines, display racks, and other furniture
 - 3.6.5 Repositioning telephones
 - 3.6.6 Adding raised markings on elevator control buttons
 - 3.6.7 Installing flashing alarm lights
 - 3.6.8 Widening doors
 - 3.6.9 Installing offset hinges to widen doorways
 - 3.6.10 Eliminating a turnstile or providing an alternative accessible path
 - 3.6.11 Installing accessible door hardware
 - 3.6.12 Installing grab bars in toilet stalls

- 3.6.13 Rearranging toilet partitions to increase maneuvering space
- 3.6.14 Insulating lavatory pipes under sinks to prevent burns
- 3.6.15 Installing a raised toilet seat
- 3.6.16 Installing a full-length bathroom mirror
- 3.6.17 Repositioning the paper towel dispenser in a bathroom
- 3.6.18 Creating designated accessible parking spaces
- 3.6.19 Installing an accessible paper cup dispenser at an existing inaccessible water fountain
- 3.6.20 Removing high-pile, low-density carpeting
- 3.6.21 Installing vehicle hand controls.

4. Projects which consist only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals, office equipment, etc., are not considered alteration projects for the purposes of accessibility for persons with disabilities and shall not be subject to this code. For the purposes of this section, the term "construction cost" does not include building permit fees or discretionary permit fees.

NOTE: The only purpose of this exception is to exclude projects from activating the provisions of this section. The exceptions are not intended to relieve projects from complying with other applicable provisions of this code (e.g., replacement of carpet does not activate the provisions of this section; however, it still must comply with Section 1124B.3).

1134B.2.2 Where it is technically infeasible in the area of an alteration to make existing restroom facilities code compliant and to install separate sanitary facilities for each sex, then the installation of at least one unisex toilet/bathroom per floor being altered, located in the same area as existing toilet facilities, will be permitted. Such a facility shall meet the requirements of Section 1115B.7.2.